TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1926

No. [redacted] 213

THATCHER MANUFACTURING COMPANY,
PETITIONER,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 4, 1926

CERTIORARI GRANTED OCTOBER 26, 1926

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 721

THATCHER MANUFACTURING COMPANY, PETITIONER,

vs.

FEDERAL TRADE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, MARCH TERM, 1924

No. 3167

FEDERAL TRADE COMMISSION, Petitioner,

vs.

THATCHER MANUFACTURING COMPANY, Respondent

APPLICATION FOR THE ENFORCEMENT OF AN ORDER OF THE FEDERAL TRADE COMMISSION

On this day comes the Federal Trade Commission by W. H. Fuller and A. R. Brindley, its attorneys, and presents to the court an application for the enforcement of an order issued by the Federal Trade Commission on December 31, 1923, in a proceeding instituted by it against Thatcher Manufacturing Company, entitled "Federal Trade Commission v. Thatcher Manufacturing Company, Docket No. 738," and a certified transcript of the entire record in said proceeding, including all the testimony taken and the report and order of the Federal Trade Commission.

It is ordered that such application and transcript be filed herein and that notice of the filing thereof and a copy of such application and transcript be served upon Thatcher Manufacturing Company as the law directs.

March 31, 1924.

Victor B. Woolley, U. S. Circuit Judge.

Endorsements: 3167. Order Allowing Filing of Application and Record and Directing Service Received & Filed Mar. 31, 1924. Saunders Lewis, Jr., Clerk.

RESOLUTION.

(Dated March 1, 1921.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 1st day of March, A. D. 1921:

Present: Huston Thompson, chairman, Nelson B. Gaskill, Jno. Garland Pollard, Victor Murdock, John F. Nugent, commissioners.

FEDERAL TRADE COMMISSION vs. THATCHER MANUFACTURING COMPANY.	Docket No. 738. Complaint in the matter of the alleged violation of section 7 of an act of Congress approved October 15, 1914, and section 5 of an act of Congress approved September 26, 1914.

Whereas the Federal Trade Commission has reason to believe that Thatcher Manufacturing Company has violated and is violating the provisions of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, and it appearing to the commission that a proceeding by it in respect thereof would be to the interest of the public, therefore be it

Resolved, That the Federal Trade Commission issue and serve upon the said Thatcher Manufacturing Company its complaint, stating its charges in that respect in substantially the form hereunto annexed; and be it

Further resolved, That notice be given to the said Thatcher Manufacturing Company, as required by law, that the charges of said complaint will be heard by the commission in the city of Washington, D. C., on the 28th day of April, A. D. 1921, at 10.30 o'clock in the forenoon of the said day, or as soon thereafter as the same may be reached.

Adopted by the commission.

[SEAL.] (Signed) J. P. YODER,
Secretary.

COMPLAINT.

(Dated March 1, 1921.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 1st day of March, A. D. 1921.

Present: Huston Thompson, chairman; Nelson B. Gaskill, Jno. Garland Pollard, Victor Murdock, John F. Nugent, commissioners.

FEDERAL TRADE COMMISSION

vs.

THATCHER MANUFACTURING COMPANY.

Docket No. 738. Complaint in the matter of the alleged violation of section 7 of an act of Congress approved October 15, 1914, and section 5 of an act of Congress approved September 26, 1914.

I.

The Federal Trade Commission having reason to believe from a preliminary investigation made by it that Thatcher Manufacturing Company, hereinafter referred to as the respondent, has, during the three years last past, violated, and is violating, the provisions of section 7 of an act of Congress approved October 15, 1914, entitled, "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," issues this complaint stating its charges in this respect on information and belief as follows:

PARAGRAPH ONE. That the respondent, Thatcher Manufacturing Company, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New York, with its principal office, factory, and place of business located at the city of Elmira, in said State, and with other factories located at the cities of Kane, State of Pennsylvania, and Streator, State of Illinois; and is now and ever since February, 1905, has been engaged in the business of manufacturing and selling milk bottles throughout the various States of the United States, the Territories thereof, and the District of Columbia in competition with other persons, firms, and corporations similarly engaged.

PARAGRAPH TWO. That in the conduct of its business respondent purchases and enters into contracts for the purchase of the necessary raw materials used in producing its product, in different States of the United States, causing the same to be moved and transported through other States of the United States, in and to its factories located in the cities of Elmira, State of New York; Kane, State of Pennsylvania; and Streator, State of Illinois; where they are made into the finished product and then sold, moved, and transported to customers located throughout the various States of the United States, the Territories thereof and the District of Columbia, and there is continuously and has been at all times herein mentioned a constant current of trade and commerce in such milk bottles between and among the various States of the United States, the Territories thereof, and the District of Columbia, and more especially from different States of the United States through other States in and to the cities of Elmira, State of New York; Kane, State of Pennsylvania; and Streator, State of Illinois, and therefrom through, in and to other States of the United States, to the Territories thereof and the District of Columbia.

PARAGRAPH THREE. That at the time of its organization in 1905 the respondent acquired from the Owens Bottle Machine Company, an Ohio corporation, of Toledo, Ohio, the exclusive right to manu-

facture and sell in the United States, milk bottles produced by an entirely automatic bottle-making machine, which was then the first and the only such machine, and respondent, under such exclusive manufacturing right, gradually increased its business and output until in the year 1918 it was making and selling approximately one-half of all the milk bottles used in the United States; that after the invention and introduction of said Owens Bottle Machine the Hartford-Fairmont Company, a corporation, put upon the market another bottle-making machine owned by it, which was in efficiency and economy the equal to or the superior of that owned by said Owens Bottle Machine Company, and thereafter said Hartford-Fairmont Company granted the exclusive and nontransferable right and license to manufacture and sell in the United States milk bottles produced by its machine, to the Travis Glass Company, a West Virginia corporation, of Clarksburg, West Virginia, the Essex Glass Company, an Ohio corporation, of Mount Vernon, Ohio, the Lockport Glass Company, a New Jersey corporation, of Lockport, New York, and the J. T. & A. Hamilton Company, a Pennsylvania corporation, of Pittsburgh, Pennsylvania, and under such exclusive manufacturing rights and licenses said licensees manufactured, sold, and transported milk bottles in commerce similar to that of the respondent as aforesaid, and in competition with each other and said respondent, Thatcher Manufacturing Company; that the nonexclusive right and license to produce and sell condiment bottles was similarly granted by said Hartford-Fairmont Company to the Woodbury Glass Company, a corporation, and this licensee engaged in manufacturing, selling, and transporting such bottles between and among the various States of the United States, in competition with other persons, firms, and corporations similarly engaged.

PARAGRAPH FOUR. That the respondent, Thatcher Manufacturing Company, a corporation in commerce as aforesaid, in August, 1919, acquired by purchase the whole of the stock and share capital of the above-mentioned Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, and the milk bottle business and the Hartford-Fairmont machine and license of said J. T. & A. Hamilton Company, and thereafter, to wit, June, 1920, said respondent acquired the Hartford-Fairmont licenses of said Travis, Essex, Lockport, and Woodbury Glass Companies, and caused all of the real and personal property of such corporations to be transferred to it by bills of sale and deeds, and since such transfers it has caused said Lockport Glass Company to dissolve and retire from business, and like dissolutions of said Travis and Essex Glass Companies are now being perfected, and since such acquisitions of stock, licenses, and physical assets as aforesaid, the respondent has and does now manufacture, sell, and control from 50 to 90% of all the milk bottles sold and used throughout the United States; that said respondent, ever since the time of such acquisitions, has owned and still does own the whole of the stock and share capital and Hartford-Fairmont licenses and physical assets of said Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, and the business and Hartford-Fairmont licenses of said J. T. & A. Hamilton Company, and the effect of the acquisition of said stock and share capital and the use of the same either by voting or granting of proxies or otherwise has been and

is to eliminate competition between and among the respondent, Thatcher Manufacturing Company, and said Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, and to restrain such commerce as aforesaid throughout the States of the United States, the Territories thereof, and the District of Columbia, and to tend to create a monopoly of such line of commerce; and respondent did not so purchase such stock and share capital solely for investment and said Travis, Essex, Lockport, and Woodbury Glass Companies are not now and never were subsidiary corporations formed for the actual carrying on of the immediate lawful business of said Thatcher Manufacturing Company or the natural and legitimate branches or extensions thereof.

II.

The Federal Trade Commission, having reason to believe from a preliminary investigation made by it that Thatcher Manufacturing Company, hereinafter referred to as respondent, has violated and is violating the provisions of section 5 of an act of Congress approved September 26, 1914, entitled, "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," and it appearing that a proceeding by it in respect thereof would be to the interest of the public, issues this complaint, stating its charges in that respect on information and belief as follows:

PARAGRAPH ONE. As grounds for said complaint said commission relies upon the matters and things set out in paragraphs one, two, three, and four of count I of this complaint to the same extent as though the allegations thereof were set out at length herein, and said paragraphs one, two, three, and four are incorporated herein by reference and adopted as a part of the allegations of this count and are hereby charged as fully and completely as though the several paragraphs were repeated verbatim herein.

Therefore, notice is hereby given you, Thatcher Manufacturing Company, that the charges of this complaint will be heard by the Federal Trade Commission in the city of Washington, D. C., on the 28th day of April, 1921, at 10.30 o'clock in the forenoon of said day, or as soon thereafter as the same may be reached, at which time and place you shall have the right to appear and show cause why an order should not be entered by the Federal Trade Commission requiring the respondent, Thatcher Manufacturing Company, to divest itself of the stock unlawfully held in the aforesaid Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, and to cease and desist from the violations of law charged in this complaint.

You will further take notice that within thirty (30) days after the service of this complaint you are required to file with the commission an answer in conformity with Rule III of the Rules of Practice before the commission.

In witness whereof the Federal Trade Commission has caused this complaint to be issued, signed by its secretary, and its official seal to be affixed hereto at the city of Washington, D. C., on this 1st day of March, A. D. 1921.

By the commission:

[SEAL.] (Signed) J. P. YODER,
Secretary.

ANSWER.

(Filed April 4, 1921.)

Before Federal Trade Commission.

Docket No. 738.

Federal Trade Commission

vs.

Thatcher Manufacturing Co.

I.

ANSWER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 7 OF THE ACT OF CONGRESS APPROVED OCTOBER 15, 1914.

Now comes the Thatcher Manufacturing Company, respondent in the above entitled cause, and makes answer to the complaint therein that the Federal Trade Commission has no jurisdiction in respect of the acts and transactions alleged in said complaint, and that said complaint fails to set forth facts constituting a violation of section 7 of the act of Congress approved October 15, 1914, known as the "Clayton Act," or of any law, the enforcement of which lies within the power of said commission.

Without waiving the defense above set forth, or any of the other invalidities or defects in said complaint, and reserving the benefits of all exceptions that can be taken thereto, and further denying that the said complaint and proceedings based thereon are to the interest of the public, the respondent makes further answer to the said complaint, as follows:

1. The respondent admits the allegations of paragraph 1 of said complaint.

2. The respondent admits the allegations of paragraph 2 of said complaint.

3. Replying to paragraph 3 of said complaint, respondent admits that several years ago it acquired from the Owens Bottle Machine Company the exclusive right to use in the United States for producing milk bottles an entirely automatic bottle-making machine, which machine was at the time of such acquisition the first and only type of fully automatic machine in use in the United States for making milk bottles. The respondent denies that it acquired from said Owens Company any exclusive right to sell milk bottles. The respondent alleges that said machine was covered and fully protected by patents against use by others and that any monopoly factor connected with the use thereof was a patent monopoly, lawfully existing by virtue of the patent law of the United States.

4. Replying further to paragraph 3 the respondent denies that under such exclusive manufacturing right it was, in the year 1918, making or selling approximately one-half of all the milk bottles used in the United States. The respondent has no certain knowledge as to the total production of such bottles in the United States

in 1918, but believes that at that time it was making about forty per cent of that total.

5. Replying further to said paragraph 3 the respondent admits that after the introduction of the said Owens bottle machine the Hartford-Fairmont Company put on the market a machine for making milk bottles, different from the said Owens machine and that said machines of the Hartford-Fairmont Company, operated as a unit, were in efficiency and economy equal or superior to that owned by the said Owens Company.

6. Replying further to paragraph 3, the respondent admits that after the introduction of said Hartford-Fairmont machine the Hartford-Fairmont Company granted to four certain concerns, to wit: Travis Glass Company; Essex Glass Company; Lockport Glass Company; J. T. & A. Hamilton Company (at that time a partnership and later organized as a corporation) licensees to use the said milk-bottle-making machinery of the Hartford-Fairmont Company in the United States to produce milk bottles. The respondent denies that such licenses conveyed or attempted to convey any right to sell bottles so made; and further denies that such licenses to the said four companies were exclusive or nontransferable, except to the extent that under certain conditions set forth in said licenses, and only under such conditions, such use of said machinery for such purpose was made exclusive in said four companies and the right to transfer said licenses was restricted.

7. Replying further to paragraph 3 the respondent admits that under such licenses from the Hartford-Fairmont Company said four licensees manufactured milk bottles and the respondent further admits that the said licensees sold and transported such bottles in commerce, such commerce being generally similar to that of the respondent and that from time to time the sale by the said licensees were in competition with each other and with the respondent. The respondent denies the allegation of paragraph 3, if such allegation there be, that such sale and transportation was under said licenses, or in any way conditioned upon said licenses.

8. Replying further to paragraph 3 the despondent admits that nonexclusive licenses were granted to the Woodbury Glass Company by said Hartford-Fairmont Company to use the Hartford-Fairmont feeder machine for producing condiment bottles. It denies that said licenses for condiment bottles granted or conveyed in any way the right to sell such bottles. The respondent admits that the Woodbury Glass Company manufactured and sold, and transported such bottles in such commerce in competition with other parties. The respondent alleges that at no time did the Woodbury Glass Company produce milk bottles, and at no time did its business compete with the milk-bottle business of the respondent.

9. The respondent says that it has not sufficient information upon which to form a belief as to the allegations of paragraph 4 of said complaint to the effect that the respondent has and does now manufacture, sell, and control from 50 to 90% of all the milk bottles sold and used throughout the United States and therefore denies said allegation. The respondent alleges that all the machinery operated by it in making milk bottles was and is used by the respondent under licenses from the said Owens Company or from the Hartford-Fairmont Company, or both, and that all of said machinery was and is

fully covered and protected by United States patents against use by others, and that any monopoly or factor of monopoly, if any there be, arising in connection with the use of such machinery was and is based upon and derived from such patent rights, and is lawfully held, and exercised by virtue of lawful patent grants from the United States.

10. The respondent denies all the other allegations of paragraph 4 of said complaint, except that respondent admits that it has acquired all the real and personal property of the said Travis, Essex, Lockport, and Woodbury Glass Companies and that the Travis, Essex, and Lockport Glass Companies were dissolved prior to the date of said complaint. The respondent further admits that it acquired by direct cash purchase the Hartford-Fairmont milk-bottle machine and the license therefor owned by the J. T. & A. Hamilton Company. And the respondent alleges, in further reply to the allegations of said complaint, and of paragraph 4 thereof in particular, that it has, in paragraphs 12 to 22, inclusive, of this reply, set forth completely all the facts relevant to the issues in this case bearing on the relations of the respondent to and its interest in the stock or share capital of the said Travis, Essex, Lockport, Hamilton, and Woodbury Companies.

11. The respondent says that it is impossible, merely by way of direct reply to said complainant, to set forth plainly and sufficiently, for the fair and full information of the honorable commission, the character of the transactions which constitute the issue. The respondent respectfully desires for that purpose to present in this its reply a clear statement of the essential facts. The respondent understands from said complaint and believes that the underlying question involved under the alleged violation of section 7 of the Clayton Act, is the relation of the respondent to the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the J. T. & A. Hamilton Company, and the Woodbury Glass Company. The respondent, therefore, makes the following statement as to such relation, which statement covers all the essential facts relevant thereto.

12. (a) In the case of the Hamilton Company there were no dealings whatsoever in capital stock, but simply a direct cash purchase by the respondent of a certain license and machinery.

(b) The Woodbury Glass Company did not make any milk bottles, but only condiment bottles. It was not and never has been in any way competitor of the respondent.

(c) The remaining companies, Essex, Travis, and Lockport Glass Companies, are still to be considered. They will be referred to hereafter as the "three companies." The facts set forth below are all the relevant facts relating to the connection of the stocks of these companies with the respondent.

13. In addition to the three companies, there appeared as essential parties to the transactions the Sterling Glass Company, the Thatcher Manufacturing Company (the respondent), Messrs. F. E. Baldwin, Edward D. Libbey, and William Ford, and later Mr. H. C. Mandeville and Mr. Frank L. Collins. Mr. Baldwin was president and one of the largest stockholders in the respondent company. But at no time during the transactions set forth below did

he hold a majority of the voting stock of the respondent company. Messrs. Libbey and Ford represented outside interests.

14. The entire transaction in question began in August, 1919, and was based on the fact that there were then outstanding and available certain options on the stocks of the three companies. There was also the expectation (never realized) that certain other interests would be brought in. It was the intention from the beginning that the respondent should acquire the physical assets of the three companies, together with their license rights. Considerable negotiations were pending, necessitating probable delay. The option time was comparatively short. The Sterling Glass Company was therefore formed on August 25, 1919, to serve merely as a temporary means through which, if necessary, the desired rights could be acquired quickly. It issued $500,000 par value of its stock. Of this a little less than one-half was taken by the respondent at par and the other half by Mr. Libbey.

15. On August 28th and 29th, 1919, Messrs. Libbey, Baldwin, and Ford discounted at the Guaranty Trust Company their separate individual notes for a total of $1,610,000. The sum thus borrowed, together with the $500,000 subscribed to the Sterling Company, was on that day used to purchase all the stocks of the three companies, in accordance with the said outstanding options. These stock certificates were endorsed in blank and delivered to the Guaranty Trust Company as collateral to secure the said notes of Messrs. Libbey, Baldwin, and Ford. The record title of all these stocks, however, remained for some time thereafter in the names of the original stockholders of the three companies.

16. At the same time, on August 28th, an agreement was made between Messrs. Baldwin, Libbey, and Ford, and the Sterling Glass Company, reciting the transaction, the facts as to said individual loans, stating the purpose that a "permanent company be organized to take over the ownership of the plants and assets of all the said companies," and providing that the Sterling Company assumed all the liabilities of the other parties upon the said notes; that upon payment of said notes the Sterling Company had the right (hereafter called "redemption right") to take over the stocks of the three companies then pledged as collateral for said notes; providing that under certain contingencies Mr. Libbey might wholly withdraw from all the obligations and benefits of the transaction, and that upon such withdrawal all such liability and rights should be assumed by and belong to Mr. Baldwin. Up to this point, therefore (August 28th, 1919), the record title of the stocks of the three companies was still in the original owners. But the equitable interest therein had in fact been purchased with money advanced, as set forth in paragraph 15, by the Sterling Company and Messrs. Libbey, Baldwin, and Ford, and apparently belonged to these four parties. Also, under the contract of August 28th, 1919, the Sterling Company had assumed the obligations of these three men (incurred when they borrowed the $1,610,000), and was therefore given the additional and special right, at any time, by paying those notes, to take over the stocks of the three companies (the "redemption right").

17. The next change took place on December 11, 1919. The expected bringing in of other interests referred to in paragraph 14

fell through. As this had been the main inducement interesting Messrs. Libbey and Ford in the whole transaction, they on that date exercised the right given them under the contract of August 28, 1919, and withdrew from the entire affair. Thereupon, under that contract Mr. Baldwin assumed the rights and obligations arising in the whole transaction. Accordingly the "redemption right" at this point apparently passed to Mr. Baldwin.

18. The next change that occurred was as follows:

(a) On December 6th, 1919, the stock of the Lockport Company, except for a few shares sufficient to qualify directors in the company, was transferred to Mr. H. C. Mandeville, then a director of the Thatcher Company.

(b) On January 5, 1920, the stock of the Travis Company, with a like exception, was transferred to Mr. Baldwin.

(c) On January 5, 1920, the stock of the Essex Company, with a like exception, was transferred to Mr. Frank L. Collins.

19. On June 2, 1920, Mr. Libbey transferred his half of the stock of the Sterling Company to the respondent, which thus became the owner of practically all of that stock. No further change took place in the status of this stock, or of the stocks of the three companies until the corporate dissolutions set forth in paragraph 22 below.

20. At no time whatsoever did the respondent, or the Sterling Company hold or own any of the stocks of the three companies, or have any voting power or control over their management.

At no time did any person or corporation controlling the respondent or owning a majority of its voting stock have any voting power in, or control over the management of any of the three companies. The sole connection at any time between the respondent and the stocks of the three companies lay in the remote relationship that for a part of the time the respondent controlled less than one-half, and for the rest of the time practically the whole of the stock of another company (Sterling) which in its turn had only an indeterminate beneficial interest, never liquidated, in the stocks of the three companies, but which never had any voting power in said companies or any voice whatsoever in their management.

21. The situation above set forth as to stock ownership was maintained unchanged until the dissolutions stated in paragraph 22. Meantime the actual assets of the three companies were transferred to the respondent as follows:

On June 17th, 1920, at the request of the stockholders of the Essex Company, that company transferred all the physical assets to the respondent.

One June 25th, 1920, upon similar request, the assets of the Travis Company were transferred to the respondent.

On the same date, upon similar request, the assets of the Lockport Company were transferred to the respondent. The said assets have now become entirely intermingled with each other and with those of the respondent, and any separation thereof is now impossible.

22. On September 9th, 1920, the Sterling Glass Company was dissolved; on October 20th, 1920, the Lockport Company was dissolved; on December 18th the Essex Glass Company was dissolved; on January 13th, 1921, the Travis Glass Company was dissolved.

The delay in the dissolution of the Travis Company was caused by the absence of Mr. Travis in Europe. The delay in the dissolution of the Essex Company was caused by the necessity of getting the Thatcher Company qualified to do business in Ohio, a procedure which took some months.

23. The respondent alleges that the foregoing statements in paragraphs 12 to 22, inclusive, contain all the relevant facts regarding its relation to the stocks of the Essex, Travis, Lockport, Hamilton, and Woodbury Companies and denies any allegations in said complaint inconsistent with or contradictory thereof, and any other allegation not specifically admitted, or not specifically denied herein.

The respondent denies that the effect of its control of the stock of the Sterling Glass Company, or any use of the same by voting or granting of proxies, or otherwise, has been to eliminate competition between the respondent and the said five licensees, or to restrain the commerce referred to in said complaint, or tend to create a monopoly of said line of commerce. The respondent denies that any such control by it of the stock of the Sterling Glass Company was ever used in any way for the purpose of the directing business policy, business conduct, or competition of the said five licensees, or any of them. The respondent says that the acquisition by it of the said licenses and physical assets of said five licensees was strictly in the nature of the actual carrying-on of its immediate lawful business and the natural and legitimate branches and extensions thereof, and that its ownership or control of one-half, and of the whole, of the stock of the Sterling Glass Company, was simply a temporary and formal means, never fully used, and only directed at the real purpose of the acquisition by the respondent directly of such licenses and physical assets, and for the temporary purpose of taking advantage of a certain option for such purchase, and to keep open the possibility of such purchase during the usual negotiations or the financing thereof.

24. The respondent further alleges that whatever relation to or interest in the stocks of the three companies it may have had, if any, wholly and finally ended upon the dissolution of said three companies, as set forth in paragraph 22.

It alleges that it is not now possible for it to divest itself of ownership or control of such stocks, because it never had such ownership or control, and because such stocks now no longer exist.

25. The respondent denies that it has violated or is now violating any of the provisions of section 7 of said act of October 15, 1914, and it alleges that the acquisition of the assets of other companies above set forth have been to the benefit of the public and the advance of the glass industry by the reduction of cost of production and distribution and the improvement of service.

II.

ANSWER IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 5 OF THE ACT APPROVED SEPTEMBER 26, 1914.

The respondent makes answer that the said complaint fails wholly to set forth any facts constituting a violation of section 5 of the act of Congress approved September 26, 1914, entitled "An act to create the Federal Trade Commission," etc., or establishing the jurisdiction

of said commission in the premises, and without waiving objections to the jurisdiction, or to other invalidities or defects of said complaint, and reserving all exceptions that can be taken thereto, the respondent makes further answer as follows:

1. The respondent denies that it has at any time violated section 5 of said act approved September 26, 1914, and denies that it has used or practiced at any time any unfair method of competition.

2. The respondent, so far as is relevant or necessary for making its defense under the violation last stated above charged, hereby incorporates herein the statements, allegations, and denials by it made in its reply to the violation first above charged. And the respondent denies each and every allegation of said complaint not herein specifically admitted or not specifically denied.

Wherefore, the respondent prays that said complaint may be dismissed and that it, the respondent, may go hence without day.

THATCHER MANUFACTURING COMPANY,
By H. C. MANDEVILLE, (Signed)
HERBERT KNOX SMITH, "
Its Attorneys.

AMENDED COMPLAINT.

(Dated July 18, 1922.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

In the matter of Thatcher Manufacturing Company. Docket No. 738.

AMENDED COMPLAINT.

Pursuant to the provisions of an act of Congress approved October 15, 1914 (the Clayton Act), entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes," the Federal Trade Commission, having reason to believe that Thatcher Manufacturing Company, hereinafter referred to as respondent, is, and has been, violating the provisions of section seven (7) of said act of Congress, issues this amended complaint and states its charges in that respect as follows:

PARAGRAPH ONE. The Thatcher Manufacturing Company, hereinafter called the respondent, is a corporation organized under the laws of New York, with its principal office, manufacturing plant, and place of business at Elmira, New York, with branch offices and manufacturing plants at Kane, Pennsylvania, Streator, Illinois, Clarksburg and Cedar Grove, West Virginia, Mt. Vernon, Ohio, Lockport, New York, and in other States of the United States. It is, and since 1905 has been, engaged in manufacturing milk bottles, and in selling, shipping, and transporting such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing is and for many years has been engaged in interstate commerce within the provisions of said act of Congress approved October 15, 1914 (the Clayton Act), in competition with other persons, firms, and corporations similarly engaged.

PARAGRAPH TWO. (a) Travis Glass Company, on and prior to August 28, 1919, and for some time thereafter, was a corporation organized under the laws of West Virginia, having its principal office, place of business, and manufacturing plant at Clarksburg, West Virginia, with a branch plant at Cedar Grove, West Virginia, and was engaged in manufacturing milk bottles and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing was engaged in interstate commerce within the provisions of said act of Congress approved October 15, 1914 (the Clayton Act), in competition with the respondent and with other persons, firms, and corporations similarly engaged.

(b) Essex Glass Company, on and prior to August 28, 1919, and for some time thereafter, was a corporation organized under the laws of Ohio, having its principal office and place of business at Mt. Vernon, Ohio, and with manufacturing plants at Mt. Vernon, Ohio, and Parkersburg, West Virginia, and was engaged in manufacturing milk bottles, and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing was engaged in interstate commerce within the provisions of said act of Congress approved October 15, 1914 (the Clayton Act), in competition with the respondent and with other persons, firms, and corporations similarly engaged.

(c) Lockport Glass Company, on and prior to August 28, 1919, and for some time thereafter, was a corporation organized under the laws of New Jersey, having its principal office, place of business, and manufacturing plant at Lockport, New York, and was engaged in manufacturing milk bottles, and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing was engaged in interstate commerce within the provisions of said act of Congress approved October 15, 1914 (the Clayton Act), in competition with the respondent and with other persons, firms, and corporations similarly engaged.

(d) Woodbury Glass Company is, and for many years has been, a corporation organized under the laws of Indiana, with its principal office, place of business, and manufacturing plant at Winchester, Indiana, and is and has been engaged in manufacturing condiment bottles and bottles of other types and kinds, and in selling and shipping such bottles to purchasers among the several States of the United States and the District of Columbia, and in so doing is and has been engaged in interstate commerce within the provisions of said act of Congress approved October 15, 1914 (the Clayton Act), in competition with other persons, firms, and corporations similarly engaged.

(e) The J. T. & A. Hamilton Company is, and in 1919 and 1920 was, a corporation organized and existing under the laws of Pennsylvania with its principal office, place of business, and manufacturing plant at Pittsburgh, Pennsylvania. Formerly the J. T. & A. Hamilton Company was a partnership, but was later organized as a corporation as aforesaid. On and prior to August 28, 1919, and for some time subsequent thereto, the J. T. & A. Hamilton Company was engaged in manufacturing milk bottles and in selling and shipping such bottles to purchasers among the several States of the United

States and the District of Columbia, and in so doing was engaged in interstate commerce within the provisions of said act of Congress approved October 15, 1914 (the Clayton Act), in competition with respondent and with other persons, firms, and corporations similarly engaged.

PARAGRAPH THREE. The Owens Bottle Company is a corporation under the laws of Ohio and was organized originally as Owens Bottle-Machine Company but duly changed its name in 1919 to The Owens Bottle Company. It has its principal office and place of business at Toledo, Ohio, and owns and operates glass factories in Ohio, West Virginia, New Jersey, Indiana, and other States, and is and for many years has been engaged in manufacturing and selling glass bottles and other glassware. The Owens bottle-blowing machine is a modern, improved, patented machine with which glass bottles and other glassware are manufactured automatically and more rapidly, cheaply, and successfully than with semiautomatic machines or by hand labor. The Owens bottle-blowing machine was the first and, until the year 1917, the only successful device or machine for manufacturing glass bottles and other glassware automatically. During the year 1903, the Owens Bottle-Machine Company acquired from the owner of the patents then covering the Owens bottle-blowing machine the exclusive right to use said machine in the United States in making glass bottles and other glassware, and since said date the Owens Bottle Company has perfected improvements and additions to said machine and has secured and owns in its own right six or more patents covering such improvements and additions. The Owens Bottle Company did not and does not manufacture milk bottles.

PARAGRAPH FOUR. The Owens Bottle Company has licensed and leased or sold Owens bottle-blowing machines, and the right to use the same, to certain persons, firms, and corporations engaged in manufacturing glass bottles and other glassware, and the manufacture, sale, licensing, and leasing of the Owens bottle-making machines is controlled exclusively by the Owens Bottle Company. About the year 1905, under certain contracts, licenses, and leases from the Owens Bottle Company, the respondent acquired and still owns the exclusive right to use the Owens bottle-blowing machines in the United States for manufacturing milk bottles, and the exclusive right to all improvements that may be made thereon, and any new machines that the Owens Bottle Company may own or acquire.

PARAGRAPH FIVE. After the respondent had acquired and was using said Owens bottle-blowing machines as aforesaid, the Hartford-Fairmont Company of Hartford, Connecticut, produced a patented and improved machine for successfully making milk bottles and other glassware automatically, and said Hartford-Fairmont machine was different from, and, in efficiency and economy of operation, equal or superior to the Owens bottle-blowing machine. The Hartford-Fairmont Company granted exclusive licenses to use its bottle-making machines for making milk bottles to four certain companies, namely, the said Travis Glass Company, Essex Glass Company, Lockport Glass Company, and J. T. & A. Hamilton Company, and also granted a nonexclusive license to the said Woodbury Glass Company to use said machines for producing condiment bottles, including the right to make fruit jars, grape juice, cider, vinegar, horse radish, and catsup bottles, and bottles and containers for

food and food ingredients. Such licenses so granted to the said Travis, Essex, Lockport, and Hamilton companies contained conditions and limitations under which the use of said machines for manufacturing milk bottles was exclusive in said four companies, and no license or machine could be transferred without the consent of Hartford-Fairmont Company. Under said licenses, the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and J. T. & A. Hamilton Company manufactured milk bottles, and sold and transported such bottles to purchasers among the several States of the United States and the District of Columbia, in interstate commerce in competition with each other and with the respondent.

PARAGRAPH SIX. The said bottle-making machines so produced, leased, and licensed by the Owens Bottle Company and Hartford-Fairmont Company, at the time the events herein set forth took place, were the only successful entirely automatic bottle-making machines devised and leased or sold as a complete unit, and the exclusive right to use said machines for manufacturing milk bottles was vested in and restricted to the respondent and the said Travis, Essex, Lockport, and Hamilton companies.

PARAGRAPH SEVEN. On or about the 28th day of August, 1919, the respondent, while engaged in commerce as aforesaid, acquired the whole of the stock or other share capital of the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, the said corporations hereinabove described, while each of said corporations was engaged in interstate commerce as aforesaid in competition with the respondent. The effect of such acquisition of said stock or share capital was to substantially lessen competition between the respondent and each of said corporations whose stock or share capital was so acquired, namely: Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, and between each of said corporations whose stock or other share capital was so acquired and each other of said corporations. Such acquisition of said stock and share capital also tended to create in the respondent a monopoly in interstate commerce in the milk bottle business, and was and is violative of said act of Congress approved October 15, 1914 (the Clayton Act). The scheme and the methods by which the respondent acquired the said stock or share capital of said corporations are hereinafter set forth substantially.

PARAGRAPH EIGHT. In 1919 a gentleman by name I. T. Axton, then president and principal stockholder of the Woodbury Glass Company, attempted to merge or consolidate the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, and acquire the Hartford-Fairmont machine and license of the J. T. & A. Hamilton Company. In pursuance of said plan Axton secured options on the outstanding capital stock of said Travis, Essex, Lockport, and Woodbury companies, such options expiring on or about August 28th, 1919. Failing to accomplish such merger himself, Axton, in July, 1919, approached F. E. Baldwin, the president and largest stockholder of the Thatcher Manufacturing Company, and inquired if Baldwin or the Thatcher Manufacturing Company would acquire or purchase the stock of the said four companies and the Hartford-Fairmont machine and license of the J. T. & A. Hamilton Company. Thereupon, Baldwin and H. C. Mandeville, a director and

counsel of the Thatcher Manufacturing Company and subsequently its vice president, E. D. Libbey, president and a large stockholder of the Owens Bottle Company, and William Ford, a large stockholder in the Owens Bottle Company, agreed to purchase the stock of the Travis, Essex, Lockport, and Woodbury companies, and the Hartford-Fairmont machine and license of the Hamilton Company under the options held by Axton. In pursuance thereof they organized the said Sterling Glass Company in August, 1919, with an authorized capital stock of six hundred thousand dollars, of which five hundred thousand dollars was issued for cash, one-half of which was taken by Libbey, and the remaining one-half by the respondent and certain of its agents or employees.

PARAGRAPH NINE. On August 28, 1919, Axton caused the stockholders of the said Travis, Essex, Lockport, and Woodbury companies to meet in New York City, N. Y., in an office or room of the Guaranty Trust Company, said stockholders having with them the stock certificates in the respective companies ready for transfer and delivery on payment of the purchase price. On said date, Messrs. Baldwin, Mandeville, Libbey, and Ford met in another office or room of the Guaranty Trust Company, and Baldwin, Libbey, and Ford executed their separate, individual promissory notes to the Guaranty Trust Company for a total of one million, six hundred and ten thousand dollars ($1,610,000), and each endorsed the notes of the others so that all were liable on all three notes. The sum secured from the Guaranty Trust Company on said notes, together with the five hundred thousand dollars ($500,000) subscribed in cash to the capital stock of the Sterling Glass Company, was used to purchase all the capital stock of the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company. The certificates of stock in the respective companies were endorsed in blank by the respective stockholders of the said companies, and by them delivered to the Guaranty Trust Company, and attached to the said notes of Baldwin, Libbey, and Ford as collateral security therefor.

PARAGRAPH TEN. On the 28th day of August, 1919, immediately after the purchase of said stock, the Sterling Glass Company and Baldwin, Libbey, and Ford entered into a written agreement which set forth the transaction and the facts as to said individual notes, and provided, among other things, that the Sterling Glass Company assume all liability of the other parties upon said notes, and upon the payment of said notes the Sterling Glass Company should have the right to take over the stock of said companies then pledged as collateral for said notes. Said agreement gave Ford and Libbey the option to retire from the said stock transaction, and in that event Baldwin was to assume all their liability thereunder and on the said notes, and was to procure the release of Ford and Libbey from said notes, and held them harmless against liability thereon, and repay to Libbey the two hundred and fifty thousand dollars ($250,000) invested by Libbey in the capital stock of the Sterling Glass Company. Upon the payment of said money and the release from endorsement and liability, Ford and Libbey were to release to Baldwin all interest in the stock of Sterling Glass Company and transfer the same to Baldwin's nominee, and Baldwin might thereafter proceed as he saw fit.

PARAGRAPH ELEVEN. On or about the same date, August 28, 1919, the Thatcher Manufacturing Company acquired by purchase the Hartford-Fairmont machine and license of the J. T. & A. Hamilton Company, and by contract of sale dated August 29, 1919, the respondent acquired all the milk-bottle business of the said Hamilton Company in the United States, outside of Allegheny County, Pennsylvania, and the said contract provided that for a period of ten years from January 1, 1920, the vendors individually should not manufacture and sell bottles outside the limits of Allegheny County, Pennsylvania, and should not manufacture and sell milk bottles made on the Owens bottle-making machine in Allegheny County, Pennsylvania.

PARAGRAPH TWELVE. On December 11, 1919, Libbey and Ford decided to exercise their option to withdraw, and on said date so notified Baldwin and the respondent. The operation of the Essex Glass Company, Travis Glass Company, Lockport Glass Company, and the Woodbury Glass Company, after the purchase of the stock on August 28th, 1919, was continued under their former management until January 1, 1920, when the entire control and direction of said companies was brought to the offices of the respondent at Elmira, New York, and thereafter said companies and their plants were operated by the respondent as a part thereof.

PARAGRAPH THIRTEEN. In June, 1920, the certificates of stock in the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Woodbury Glass Company, held as aforesaid by the Guaranty Trust Company of New York, were transmitted by the Guaranty Trust Company to its agents at Elmira, New York, for formal transfer. Transfer of said shares of stock upon the books of the Travis, Essex, Lockport, and Woodbury Companies was then made, the stock of said companies being reissued to F. E. Baldwin, president of the Thatcher Manufacturing Company, H. C. Mandeville, its counsel and a stockholder and director and thereafter vice president, R. W. Niver, a vice president and director of the Thatcher Manufacturing Company, and F. L. Collins, auditor of the Thatcher Manufacturing Company, and in some instances a few shares to other persons sufficient to qualify the requisite directors in each company. All the capital stock of each of said four companies was issued to these four men, a different person being the principal transferee in the case of each company, and the other qualifying shares were issued to the other three of the four, except that where the authorized number of the directors exceeded four, qualifying shares were issued to a sufficient number of the old directors to constitute the requisite number of directors. The transferees of the stock in said transactions paid no money or other consideration for the same, nor did they receive possession of any certificates of stock. The certificates of stock which were thus issued were delivered to the agent of the Guaranty Trust Company and returned to the Guaranty Trust Company in New York where said certificates were placed as before, namely: Attached to and as collateral security for the said Baldwin, Ford, and Libbey notes.

PARAGRAPH FOURTEEN. Notice from Libbey and Ford of their intention to retire from said transaction was given as hereinbefore recited, and Baldwin nominated the Thatcher Manufacturing Com-

pany as the transferee of the 2,500 shares of capital stock of Sterling Glass Company owned by Libbey, and the same was so transferred by Libbey upon the payment to him by the Thatcher Manufacturing Company of the sum of two hundred and fifty thousand dollars ($250,000) with interest. The money to purchase said 2,500 shares of stock was secured by increasing the capital stock of the Thatcher Manufacturing Company from one million dollars ($1,000,000) to one million, six hundred and twenty-five thousand dollars ($1,625,000) on or about April 20, 1920.

Paragraph Fifteen. Prior to June, 1920, the Thatcher Manufacturing Company accomplished a bond issue in the sum of two million dollars ($2,000,000) secured by a first mortgage to the Guaranty Trust Company of New York as trustee on all the assets of the Thatcher Manufacturing Company, Sterling Glass Company, Travis Glass Company, Essex Glass Company, Lockport Glass Company, and the capital stock of Woodbury Glass Company. The said bonds when executed were delivered to the underwriters, Bonbright and Company and Hemphill Noyes & Company, who paid over the proceeds thereof to H. C. Mandeville, who then and there as part of a simultaneous transaction produced the deeds and bills of sale of the Travis, Essex, Lockport, and Sterling Companies to the Thatcher Manufacturing Company, and delivered said deeds and bills of sale to the underwriters for recording. The proceeds of said bond issue were then and there paid by said Mandeville to the Guaranty Trust Company, and in return therefor the Guaranty Trust Company delivered to the said Mandeville the said notes executed by Baldwin, Ford and Libbey, and the stock certificates attached thereto.

Paragraph Sixteen. In the month of June, 1920, at the request of Baldwin, Mandeville, Collins, and Niver, and their associates, who constituted the stockholders of the Travis, Essex, Lockport, and Sterling Companies, respectively, the directors of said companies, namely, Baldwin, Mandeville, Collins, and Niver, and associates, resolved to transfer all the assets, rights and property of the Travis, Essex, Lockport, and Sterling Companies, respectively, to the respondent. Resolutions providing for such transfer were proposed and adopted by Baldwin, Mandeville, Collins, and Niver, and associates, as the stockholders and directors of each of said companies. During the month of June, 1920, in pursuance of said resolutions, all the assets, rights, licenses, and properties of the said Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Sterling Glass Company, respectively, were transferred by deeds and bills of sale to the respondent. The Hartford-Fairmont licenses of the Travis, Essex, Lockport, Woodbury, and Hamilton Companies were assigned and transferred to the respondent on or about June 1, 1920, and the Hartford-Fairmont Company assented to the same.

Paragraph Seventeen. Having caused all the assets, rights, and property of the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and Sterling Glass Company to be transferred and conveyed to it by deeds and bills of sale, as hereinbefore recited, the respondent proceeded to bring about a dissolution of the said Travis, Essex, Lockport, and Sterling Companies, and through its said officers and agents, namely, Baldwin, Mandeville, Collins, and Niver, and their associates, who constituted the stockholders,

directors, and officers of said companies also, adopted resolutions for the dissolution of the said Travis, Essex, Lockport, and Sterling Companies. In pursuance of said policy the Sterling Glass Company was dissolved September 9, 1920; the Lockport Glass Company was dissolved October 20, 1920; the Essex Glass Company was dissolved September 18, 1920, and the Travis Glass Company was dissolved January 13, 1921.

PARAGRAPH EIGHTEEN. Prior to the purchase of the stock of the Travis, Essex, Lockport, and Woodbury Companies and the milk bottle business and the Hartford-Fairmont machine and license of the Hamilton Company, each of the said companies was a competitor in interstate commerce in the milk bottle business with the respondent, and with each other. On and after the purchase of said stock each of said companies, namely, the Travis, Essex, Lockport, Woodbury, and Hamilton Companies ceased to compete in interstate commerce with the respondent and with each other.

PARAGRAPH NINETEEN. The acquisition of the capital stock of the said Travis, Essex, Lockport, and Woodbury Companies as hereinbefore set forth was contrary to law, and in violation of the provisions of an act of Congress approved October 15, 1914 (the Clayton Act), and especially of section 7 thereof. The transfer to the respondent of the assets, rights, and properties of the Travis, Essex, Lockport, and Sterling Companies and the dissolution of said companies was an artifice and subterfuge for evading the provisions of said act of Congress approved October 15, 1914 (the Clayton Act). The respondent secured and retains and enjoys the fruits and benefits of such violations, artifice, and subterfuge, and should be ordered to cease and desist from such violations, and divest itself of the stock acquired contrary to the provisions of section 7 of said act of Congress, so that competition may be restored and encouraged, and a monopoly in the milk bottle business prevented.

Wherefore, the premises considered, the Federal Trade Commission, on this 18th day of July, A. D., 1922, now here issues this its amended complaint against said respondent.

Notice.

Notice is hereby given you, Thatcher Manufacturing Company, respondent herein, that the 6th day of September, 1922, at 10.30 o'clock in the forenoon, is hereby fixed as the time, and the offices of the Federal Trade Commission, in the city of Washington, D. C., as the place, when and where a hearing will be had on the charges set forth in this amended complaint, at which time and place you shall have the right, under said act, to appear and show why an order should not be entered by said commission requiring you to cease and desist from the violation of the law charged in this complaint.

In witness whereof, the Federal Trade Commission has caused this amended complaint to be signed by its secretary, and its official seal to be hereto affixed, at Washington, D. C., this 18th day of July, 1922.

By the commission:

[SEAL.] (Signed) OTIS B. JOHNSON,
Acting Secretary.

ANSWER TO AMENDED COMPLAINT.

(Filed August 10, 1922.)

Before the Federal Trade Commission.

Docket No. 738.

Federal Trade Commission

vs.

Thatcher Manufacturing Company.

ANSWER OF RESPONDENT IN THE MATTER OF THE ALLEGED VIOLATION OF SECTION 7 OF THE ACT OF CONGRESS APPROVED OCTOBER 15TH, 1914 (THE CLAYTON ACT).

Now comes the Thatcher Manufacturing Company, respondent in the above entitled cause, and makes answer to the amended complaint therein, that the Federal Trade Commission has no jurisdiction in respect of the acts and transactions alleged in said complaint, and that said complaint fails to set forth facts constituting a violation of section 7 of the act of Congress approved October 15th, 1914, known as the Clayton Act, or of any law the enforcement of which lies within the power of said commission.

Without waiving the defense above set forth, or any of the other invalidities or defects in said complaint, and reserving the benefits of all exceptions that can be taken thereto, and further denying that the said complaint and proceedings based thereon are in the interest of the public, the respondent makes further answer to the said complaint, as follows:

SECTION 1. The respondent admits the allegations of paragraph one of said complaint, except that it denies that it has any of the branch offices mentioned therein.

SECTION 2. The respondent admits the allegations of paragraph two of said complaint, except—

That it denies any implication in subsection (a) thereof to the effect that the said branch plant of Travis Glass Company at Cedar Grove was on or before August 28, 1919, manufacturing or selling milk bottles in competition with anyone; because respondent says that on said date said Cedar Grove plant had not been completed, and was not completed when the title thereto was transferred to respondent.

That is denies any implication in subsection (d) thereof to the effect that the Woodbury Glass Company was at any time during the transaction set forth in competition either with the respondent or with the Essex, Lockport, Travis, or Hamilton companies, named in said paragraph.

SECTION 3. As to paragraph three respondent says that it has no sufficient information as to the allegations thereof and therefore leaves complainant to its proof thereon. Respondent, however, denies any implication therein that the Owens machine used by respondent during the period in question was a "modern machine."

SECTION 4. The respondent admits the allegations of paragraph four, except—

That the respondent says that it has no knowledge as to the truth of the allegations as to the control, manufacture, sale, licensing and leasing of the Owens machines by the Owens Bottle Company, and on this point, therefore, leaves the complainant to its proof.

That the respondent denies that it owns the exclusice right to all improvements that may be made or acquired by the Owens Bottle Company, on the Owens milk bottle machine, or to any machines that said Owens Company may acquire.

SECTION 5. The respondent admits the allegations of paragraph five, except that it denies that the said licenses of milk bottle machines granted to the said four companies were exclusive, except to the extent that under certain conditions set forth in said licenses, and only under such conditions, such use of said machinery for such purpose was made exclusive in said four companies.

SECTION 6. The respondent admits the allegations of paragraph six, except as to the absolutely exclusive nature of the licenses to Essex, Travis, Lockport, and Hamilton Companies which it denies. Respondent admits that the milk bottle machines of the Owens Bottle Company and the Hartford-Fairmont Company, at the time therein referred to, were the only successful entirely automatic bottle-making machines leased as a complete unit. But respondent says that at that time and ever since then there were readily available on the market machines controlled by outside parties other than the said Owens Company, or Hartford-Fairmont Company, capable of feeding glass automatically, and also machines controlled by companies other than the two named companies, capable of forming such glass, when so fed, into milk bottles, so that the two types of machines could freely be secured and combined, and were, and now are, as a matter of fact, so combined into an efficient automatic unit for making milk bottles by many manufacturers other than the respondent, and these units were and are subject to lower royalties and less restrictions than those applied to either the Owens or Hartford-Fairmont units; and milk bottles automatically made on these "outside" units were and are widely sold in free competition with those sold by respondent.

SECTION 7. The respondent denies the allegations of paragraph seven.

SECTION 8. As to paragraphs eight, nine, and ten, respondent says that it has no sufficient information as to the allegations thereof (except as set forth in sections 23 to 35, inclusive, hereof below), and therefore leaves complainant to its proof.

SECTION 9. As to paragraph ten, the respondent further says that the said paragraph is an attempt to state legal conclusions drawn from the written agreement of August 28, 1919, and, therefore, neither admits nor denies such conclusions, but leaves it to the complainant to introduce the said agreement, so that the same may speak for itself.

SECTION 10. The respondent admits the allegations of paragraph eleven, except that the respondent says that the consent of the Hartford-Fairmont Company was a prerequisite to any assignment of the

said Hamilton license, and that the said assignment of such license from Hamilton Company to the respondent and the consent of the Hartford-Fairmont Company thereto were both made on June 1, 1920, and not before that date.

SECTION 11. Respondent admits the allegations of paragraph twelve, except—

That it denies that it was notified of Mr. Libbey's withdrawal.

That it denies that the control and direction of Essex, Travis, Lockport, or Woodbury Companies was exercised by the respondent prior to April 10, 1920.

SECTION 12. As to the allegations of paragraph thirteen, respondent says that it has no information (except as set forth in sections 23 to 35 inclusive, hereof below), and therefore leaves complainant to its proof.

SECTION 13. Respondent admits the allegation of paragraph fourteen, except that it denies (as set forth in section 11 above) that it was notified of Mr. Libbey's intention to withdraw.

SECTION 14. The respondent admits the allegations of paragraphs fifteen and sixteen, except that it says that the bond issue, referred to in paragraph fifteen, was not "accomplished prior to June, 1920," and not until July 3, 1920, and it further says that there is an obvious inconsistency on this question of date between paragraphs fifteen and sixteen, in that paragraph sixteen states that "during the month of June, 1920," the assets of the Travis, Essex, Lockport, and Sterling Companies were transferred by deeds and bills of sale to the respondent; whereas in paragraph fifteen, which apparently all relates to a date prior to June, 1920, it is said that these deeds and bills of sale were delivered to the underwriters.

If, however, it is intended by said two paragraphs to state that the said bonds were executed and became effective and were delivered to the underwriters only after the execution and delivery of the said deeds and bills of sale, the respondent admits the truth of allegations so stated.

SECTION 15. As to paragraph seventeen, respondent admits that it caused the dissolution of Sterling Company and the transfer of its assets to respondent.

It also admits that the Sterling, Lockport, Essex, and Travis Companies were dissolved on the dates alleged.

The rest of said paragraph is denied.

SECTION 16. The respondent admits the allegations of paragraph eighteen, except—

That is denies that the Woodbury Company was even at any time in competition either with the respondent or with the Travis, Essex, or Lockport Companies, because, the respondent says, that it and the Travis, Essex, and Lockport Companies produced only milk bottles, while the Woodbury Company never produced milk bottles, but produced bottles of entirely different types, and that, therefore, the two lines of business never came in competition.

That it further denies any implication therein contained that the respondent purchased any of the stock of Travis, Essex, or Lockport Companies.

SECTION 17. The respondent denies the allegations of paragraph nineteen.

SECTION 18. The respondent says that all the machinery operated by it or operated formerly by Essex, Travis, Lockport, or Hamilton Companies in making milk bottles was and is used under licenses from the said Owens Company or from the said Hartford-Fairmont Company, or both, and that all said machinery was and is fully covered and protected by United States patents, which fully grant the right to the licensee thereof to exclude all others from such use, and that any monopoly or factor of monopoly, or any restraint of trade, or lessening of competition rising in connection with the use of such machinery, was and is based upon and derived from such patent rights and patents, and is lawfully held and exercised by virtue of lawful patent grants by the United States.

SECTION 19. The respondent further says that in the case of the Hamilton Company license there were no dealings whatsoever in capital stock, but simply a direct cash purchase by the respondent of a certain license and certain machinery and that further, as to the Woodbury Company, that company did not make milk bottles, but only condiment bottles, bottles for food and food ingredients and for fruit juices and the like, and that said company was not and never has been a competitor of the respondent or of the Essex, Travis, or Lockport Companies, or of the milk bottles business of the Hamilton Company.

SECTION 20. The respondent further alleges that neither Mr. F. E. Baldwin, nor any other person, during the time of the transactions set forth in said complaint, held a majority of the voting stock of the respondent company and the respondent denies that it or the Sterling Company ever held or owned any of the stocks of the Essex, Travis, Hamilton, or Lockport Companies, or had, or in any way exercised, any voting power over said companies by virtue of any interests so held in such stock and that at no time did any person or corporation controlling the respondent or owning a majority of its voting stock, have any voting power as to any of the stocks of the said four companies.

SECTION 21. The respondent further denies that the effect of its control of the stock of the Sterling Glass Company, or any use of the same by voting or granting of proxies, or otherwise, has been to eliminate competition between the respondent, Travis, Lockport, Essex, Hamilton, and Woodbury Companies, or to restrain interstate commerce, or to create a monopoly in said line of commerce. The respondent denies that any such control by it in the stock of the Sterling Company was ever used in any way for the purpose of directing the business policy, business conduct, or competition of the said last named five companies, or any of them.

The respondent alleges that its acquisition of the said licenses and physical assets of the said Essex, Lockport, Travis, and Hamilton Companies was strictly in the nature of the actual carrying on of its immediate lawful business and the natural and legitimate branches thereof. Respondent further alleges that it is now wholly impossible to segregate the said assets of said four companies so as to reestablish the status quo existing before such acquisition of assets.

SECTION 22. The respondent further alleges that whatever relation to, or interest in, the stocks of the said five companies it may have, if any, such relation and interest wholly and finally ended upon the dissolution of the Essex, Travis, and Lockport Companies (except

as to the Woodbury Company, which was not a competitor) and it alleges that it is not now possible for it to divest itself of ownership or control of such stocks because it never had such ownership or control and because (except as to said Woodbury Company) such stocks no longer exist.

SECTION 23. The respondent says that it is impossible, merely by way of direct reply to said complaint, to set forth plainly and sufficiently, for the fair and full information of the honorable commission, the character of the transactions which constitute the issue. The respondent respectfully desires for that purpose to present in this its reply a clear statement of the essential facts. The respondent understands from said complaint and believes that the underlying question involved in the alleged violation of section 7 of the Clayton Act is the relation of the respondent to the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the J. T. & A. Hamilton Company, and the Woodbury Glass Company. The respondent, therefore, makes the following statement as to such relation, which statement covers all the essential facts relevant thereto.

SECTION 24. The cases of the Hamilton and Woodbury Companies may first be disposed of.

(a) In the cases of the Hamilton Company there were no dealings whatsoever in capital stock, but simply a direct cash purchase by the respondent of a certain license and machinery.

(b) The Woodbury Company did not make any milk bottles, but only condiment bottles. It was not and never has been in any way competitor of the respondent or of the Essex, Travis, or Lockport Companies.

(c) The remaining companies, Essex, Travis, and Lockport Glass Companies, are still to be considered. They will be referred to hereafter as the "three companies." The facts set forth below are all the relevant facts relating to the connection of the respondent with the stocks of these companies.

SECTION 25. In addition to the three companies, there appeared as essential parties to the transactions the Sterling Glass Company, the Thatcher Manufacturing Company (the respondent), Messrs. F. E. Baldwin, Edward D. Libbey, and William Ford, and later Mr. H. C. Mandeville and Mr. Frank L. Collins. Mr. Baldwin was president and one of the largest stockholders in the respondent company. But at no time during the transactions set forth below did he (or anyone else) hold a majority of the voting stock of the respondent company. Mr. Mandeville was a director and later vice president of respondent. Mr. Collins was one of its employees. Messrs. Libbey and Ford represented outside interests.

SECTION 26. The entire transaction in question began in August 1919, and was based on the fact that there were then outstanding and available certain options on the stocks of the three companies. There was also the expectation (never realized) that certain other interests would be brought in. It was not at that time settled in the minds of the gentlemen taking part in the transaction, as to what interests, person, or company would be chosen as the final owner of the assets of the three companies. Considerable negotiations were pending, necessitating probable delay. The option time was comparatively short. The Sterling Glass Company was therefore formed on August 25, 1919 to serve merely as a temporary means through which

if necessary, the desired rights could be acquired quickly. It issued $500,000 par value of its stock. Of this a little less than one half was taken by the respondent at par and the other half by Mr. Libbey.

SECTION 27. On August 28th and 29th, 1919, Messrs. Libbey, Baldwin and Ford discounted at the Guaranty Trust Company their separate individual notes for a total of $1,610,000. The sum thus borrowed, together with the $500,000, subscribed to the Sterling Company, was on that day used to purchase all the stocks of the three companies, in accordance with the said outstanding options. These stock certificates were endorsed in blank and delivered to the Guaranty Trust Company as collateral to secure the said notes of Messrs. Libbey, Baldwin and Ford. The record title of all these stocks, however, remained for some time thereafter in the names of the original stockholders of the three companies.

SECTION 28. At the same time, on August 28, an agreement was made between Messrs. Baldwin, Libbey and Ford and the Sterling Glass Company, reciting the above transaction, the facts as to said individual loans, stating the purpose that a "permanent company be organized to take over the ownership of the plants and assets of all the said companies," and providing that the Sterling Company assumed all the liabilities of the other parties upon the said notes; that upon payment of said notes the Sterling Company had the right (hereafter called "redemption right") to take over the stocks of the three companies then pledged as collateral for said notes; providing that under certain contingencies Mr. Libbey might wholly withdraw from all the obligations and benefits of the transaction, and that upon such withdrawal all such liability and rights should be assumed by and belong to Mr. Baldwin. Up to this point, therefore, (August 28, 1919) the record title of the stocks of the three companies was still in the original owners. But the equitable interest therein had in fact been purchased with money advanced, as set forth in section 27, by the Sterling Company and Messrs. Libbey, Baldwin and Ford, and apparently belonged to these four parties. Also, under the contract of August 28, 1919, the Sterling Company had assumed the obligations of these three men (incurred when they borrowed the $1,610,000) and was therefore given the additional and special right, at any time, by paying those notes, to take over the stocks of the three companies (the "redemption right").

SECTION 29. The next change took place on December 11, 1919. The expected bringing in of other interests, referred to in section 26, fell through. As this had been the main inducement interesting Messrs. Libbey and Ford in the whole transaction, they on that date exercised the right given them under the contract of August 28, 1919, and gave notice to Mr. Baldwin of their retirement from the entire affair. Upon such retirement, under that contract, Mr. Baldwin assumed the rights and obligations arising in the whole transaction. Accordingly the "redemption right" at this point apparently passed to Mr. Baldwin.

SECTION 30. The next change that occurred was as follows:

(a) On December 6, 1919, the stock of the Lockport Company, except for a few shares sufficient to qualify directors in the Company, was transferred to Mr. H. C. Mandeville, then a Director of the Thatcher Company.

(b) On January 5, 1920, the stock of the Travis Company, with a like exception, was transferred to Mr. Baldwin.

(c) On January 5, 1920, the stock of the Essex Company, with a like exception, was transferred to Mr. Frank L. Collins.

SECTION 31. On June 2, 1920, Mr. Libbey transferred his half of the stock of the Sterling Company to the respondent, which thus became the owner of practicaly all of that stock and the $250,000 subscribed by Mr. Libbey on such stock was repaid to him in pursuance of the contract of August 28, 1919. No further change took place in the status of this stock, or of the stocks of the three companies until the corporate dissolutions set forth in section 34 below.

SECTION 32. At no time whatsoever did the respondent, or the Sterling Company hold or own any of the stocks of the three companies, or have or exercise any voting power or control over their management.

At no time did any person or corporation controlling the respondent or owning a majority of its voting stock have any voting power in, or control over the management of any of the three companies. The sole connection at any time between the respondent and the stocks of the three companies lay in the remote relationship that for a part of the time the respondent controlled less than one-half, and for the rest of the time practically the whole of the stock of another company (Sterling) which in its turn had only an indeterminate beneficial interest, never liquidated, in the stocks of the three companies, but which never had any voting power in any of said companies or any voice whatsoever in their management.

SECTION 33. The situation above set forth as to stock ownership was maintained unchanged until the dissolutions stated in section 34. Meantime the actual assets of the three companies were transferred to the respondent as follows:

On June 17, 1920, at the request of the stockholders of the Essex Company, that company transferred all the physical assets to the respondent.

On June 25, 1920, upon similar request, the assets of the Travis Company were transferred to the respondent.

On the same date, upon similar request, the assets of the Lockport Company were transferred to the respondent. The said assets have now become entirely intermingled with each other and with those of the respondent, and any separation thereof is now impossible.

SECTION 34. On September 9, 1920 the Sterling Glass Company was dissolved; on October 20, 1920 the Lockport Glass Company was dissolved; on December 18, 1920 the Essex Glass Company was dissolved; on January 13, 1921 the Travis Glass Company was dissolved.

The delay in the dissolution of the Travis Company was caused by the absence of Mr. Travis in Europe. The delay in the dissolution of the Essex Company was caused by the necessity of getting the Thatcher Company qualified to do business in Ohio, a procedure which took some months.

SECTION 35. The respondent alleges that the foregoing statements in Sections 23 to 34, inclusive, contain all the relevant facts regarding its relation to the stocks of the Essex, Travis, Lockport, Hamilton and Woodbury Companies and denies any allegations in said com-

plaint inconsistent with or contradictory thereof, and any other allegation not specifically admitted, or not specifically denied herein.

SECTION 36. Respondent denies that the acquisition by it of the assets of the Travis, Lockport, Essex or Hamilton Companies, or any other of the acts of the respondent alleged in said amended complaint tended to create in the respondent a monopoly in interstate commerce in the milk bottle business. And respondent says that there were at least twelve other companies in the United States making and selling milk bottles in competition with respondent, some of them powerful and very active and successful business concerns, using efficient automatic milk bottle machinery of types other than used by respondent, and on more favorable licensing terms, as set forth above in section 6.

SECTION 37. The respondent denies that it has violated or is now violating any of the provisions of section seven of the said act of October 15th, 1924.

Wherefore the respondent prays that the said complaint may be dismissed and that it, the respondent, may go hence without day.

THATCHER MANUFACTURING COMPANY.
By HERBERT KNOX SMITH, (signed)
Its Attorney.

STIPULATION AS TO FACTS.

UNITED STATES OF AMERICA,
Before Federal Trade Commission, ss:

FEDERAL TRADE COMMISSION
vs.
THATCHER MANUFACTURING COMPANY. } DOCKET NO. 738.

STIPULATION AS TO FACTS.

Pursuant to the provisions of an act of Congress approved September 26, 1914, and an act of Congress approved October 15, 1914, the Federal Trade Commission, on the first day of March, 1921, issued its complaint against the respondent above named, and caused such complaint to be served as required by law, in which complaint it was charged that said respondent was and had been using unfair methods of competition in commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914, and was and had been violating the provisions of section 7 of the act of Congress approved October 15, 1914; whereupon said respondent entered its appearance and made answer in writing to said complaint, and said respondent being desirous of expediting the hearing of said complaint and avoiding the expense incident to the taking of testimony;

Now, therefore, it is hereby stipulated and agreed by and between W. H. Fuller, chief counsel for the Federal Trade Commission, and Thatcher Manufacturing Company, respondent above named, subject to approval by the Federal Trade Commission, that the following statement of facts may be taken as facts of this proceeding before the Federal Trade Commission and in lieu of testimony before the commission, in support of the charges stated in the complaint or in opposition thereto; that the said commission may proceed further upon said statement, together with such testimony as may be adduced

by either party, to make its report in said proceeding, stating its findings as to the facts and conclusion, and entering its order disposing of the proceeding.

STATEMENT OF FACTS.

(a) The Thatcher Manufacturing Company is and for many years has been, a corporation organized and existing under the laws of the State of New York, with its principal office, manufacturing plant and place of business in the city of Elmira, N. Y., and has branch offices and manufacturing plants at Clarksburg and Cedar Grove, W. Va., Mount Vernon, Ohio, Lockport, N. Y., and in other States of the United States.

(b) The Sterling Glass Company was, from its organization in August, 1919, until dissolution, in September, 1920, a corporation organized and existing under the laws of the State of New York, with its principal office and place of business at Elmira, N. Y.

(c) The Travis Glass Company, in 1919 and 1920, and for many years prior thereto, was a corporation organized under the laws of the State of West Virginia, with its principal office and place of business and principal manufacturing plant at Clarksburg, W. Va., and having a branch plant at Cedar Grove, W. Va.

(d) The Essex Glass Company, in 1919 and 1920 and for many years prior thereto, was a corporation organized and existing under the laws of the State of Ohio, with its principal office and place of business at Mount Vernon, Ohio, and having manufacturing plants at Mount Vernon, Ohio, and at Parkersburg, W. Va.

(e) The Lockport Glass Company, in 1919 and 1920 and for many years prior thereto, was a corporation organized and existing under the laws of the State of New Jersey, having its principal office and place of business at Lockport, N. Y., and having its principal manufacturing plant at Lockport, N. Y.

(f) The Woodbury Glass Company is, and in 1919 and 1920 was, a corporation organized and existing under the laws of the State of Indiana, with its principal office and place of business and principal manufacturing plant at Winchester, Ind.

(g) The J. T. & A. Hamilton Company is, and in 1919 and 1920 was, a corporation organized and existing under the laws of the State of Pennsylvania, having its principal office, place of business, and principal manufacturing plant at Pittsburgh, Pa.

EXHIBITS.

The documents attached hereto and marked respectively Exhibits A to Z–10, inclusive, are made a part of this stipulation, and Exhibits A to Z–10, inclusive, are admitted to be true and correct copies, respectively, of the several documents and records hereinafter named, and such exhibits may be treated and considered by the Federal Trade Commission as evidence and testimony in this proceeding the same as if duly proved, authenticated, offered and admitted in evidence.

Exhibit A is a true copy of a contract or agreement between the Travis Glass Company and I. T. Axton.

Exhibit B is a true copy of a contract or agreement between Travis Glass Company and I. T. Axton.

Exhibit C is a true copy of a contract or agreement between O. P. Lamb et als. and I. T. Axton.

Exhibit D is a true copy of a contract or agreement between Lockport Glass Company and I. T. Axton.

Exhibit E is a true copy of a contract or agreement between Ralph S. Keep et als. and I. T. Axton.

Exhibit F is a true copy of the certificate of incorporation of Sterling Glass Company, Inc.

Exhibit G is a true copy of a contract or agreement made August 28, 1919, between Francis E. Baldwin, of the first part, William Ford, of the second part, Edward D. Libbey, of the third part, and Sterling Glass Company, Inc., of the fourth part.

Exhibit H is a true copy of a letter dated September 2, 1919, from H. C. Mandeville to F. E. Baldwin.

Exhibit I is a true copy of a letter or notice from William Ford to Francis E. Baldwin and Thatcher Manufacturing Company.

Exhibit J is a true copy of a letter or notice from E. D. Libbey to Francis E. Baldwin and Thatcher Manufacturing Company.

Exhibit K is a true copy of the annual report for 1919 of Francis E. Baldwin, president of the Thatcher Manufacturing Company, to the stockholders and directors of the Thatcher Manufacturing Company.

Exhibit L is a true copy of an agreement between Francis E. Baldwin, of the first part and Hemphill, Noyes & Company, and Bonbright & Company, Inc., of the second part.

Exhibit M is a true copy of the minutes of a special meeting of the stockholders of Thatcher Manufacturing Company, held April 12, 1920.

Exhibit N is a true copy of a letter or notice from Thatcher Manufacturing Company, by F. E. Baldwin, president and others, to Sterling Glass Company, Inc., and the board of directors thereof.

Exhibit O is a true copy of the minutes of a special meeting of the stockholders of Sterling Glass Company, Inc., held on the 7th day of June, 1920.

Exhibit P is a true copy of a deed of conveyance executed on the 7th day of June, 1920, by Sterling Glass Company, Inc., to Thatcher Manufacturing Company.

Exhibit Q is a true copy of the minutes of a special meeting of the board of directors of Thatcher Manufacturing Company on June 3, 1920.

Exhibit R is a true copy of the minutes of a special meeting of the board of directors of Sterling Glass Company, Inc., held on the 7th day of June, 1920.

Exhibit S is a true copy of a letter or notice from H. E. Travis and the other persons therein mentioned to Travis Glass Company and the board of directors thereof.

Exhibit T is a true copy of the minutes of a special meeting of the stockholders of Travis Glass Company, held on June 12, 1920.

Exhibit U is a true copy of a letter or notice from F. E. Baldwin and others to the Travis Glass Company and the board of directors thereof.

Exhibit V is a true copy of a deed dated June 25, 1920, from Travis Glass Company to Thatcher Manufacturing Company.

Exhibit W is a true copy of a letter or agreement given by Thatcher Manufacturing Company to Travis Glass Company.

Exhibit X is a true copy of a letter or notice from R. W. Lamb and others to Essex Glass Company and the board of directors thereof.

Exhibit Y is a true copy of the minutes of a special meeting of the stockholders of Essex Glass Company held at Mount Vernon, Ohio, on June 11, 1920.

Exhibit Z is a true copy of a letter or notice given by F. E. Baldwin and others to the Essex Glass Company and the board of directors thereof.

Exhibit Z–1 is a true copy of a deed dated the 17th day of June, 1920, from Essex Glass Company to Thatcher Manufacturing Company.

Exhibit Z–2 is a true copy of a notice or agreement given by Thatcher Manufacturing Company to Essex Glass Company.

Exhibit Z–3 is a true copy of a letter or notice given by F. E. Baldwin and others to Lockport Glass Company and the board of directors thereof.

Exhibit Z–4 is a true copy of the minutes of a special meeting of the stockholders of Lockport Glass Company on the 24th day of June, 1920.

Exhibit Z–5 is a true copy of a letter or notice given by F. E. Baldwin and others to Lockport Glass Company and the board of directors thereof.

Exhibit Z–6 is a true copy of a deed dated the 25th day of June, 1920, given by Lockport Glass Company to Thatcher Manufacturing Company.

Exhibit Z–7 is a true copy of a notice or agreement given by Thatcher Manufacturing Company to Lockport Glass Company.

Exhibit Z–8 is a true copy of a letter dated October 18, 1920, written by the Thatcher Manufacturing Company, by F. E. Baldwin, its president, to Federal Trade Commission.

Exhibit Z–9 is a true copy of the printed advertisement of Bonbright & Co. of the sale of $2,000,000, 10-year, 7% gold bonds of the Thatcher Manufacturing Company.

Exhibit Z–10 is a true copy of a letter dated April 23, 1920 written by Francis E. Baldwin, president of the Thatcher Manufacturing Company to Bonbright & Co., Inc., and Hemphill, Noyes & Co.

This stipulation is without prejudice to the rights of either party to adduce additional evidence and testimony in this proceeding.

(Signed) W. H. FULLER,
Chief Counsel, Federal Trade Commission.

" THATCHER MANUFACTURING COMPANY,
By HERBERT KNOX SMITH, *Attorney.*

JUNE 21, 1922.

Approved and filed.

By the commission:

(Signed) J. P. YODER, *Secy.*
O. B. J., *Clerk.*

Exhibit A.

This agreement, made and executed in duplicate this thirtieth day of May, nineteen hundred and nineteen, by and between Travis Glass Company, of Clarksburg, West Virginia, party of the first part, and I. T. Axton, of the city of Louisville, Kentucky, party of the second part, witnesseth:

The said party of the first part, for and in consideration of the sum of one dollar ($1.00) to it in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does hereby covenant and agree to and with the party of the second part that it will sell and deliver to the party of the second part all of the capital stock of the company above mentioned upon the further payment of the sum of five hundred thousand dollars ($500,000) in cash, or, at the option of the said party of the second part, one hundred and fifty thousand dollars ($150,000) in cash, one hundred and fifty thousand dollars ($150,000) of seven per cent (7%) cumulative preferred stock, preferred both as to dividends and assets, in the event of dissolution or liquidation, or seven per cent (7%) bonds and three hundred thousand dollars ($300,000) of common stock of a company to be organized for the purpose of taking over this and other companies engaged in the milk-bottle business, provided that the party of the second part shall elect to purchase all of said stock of said company and accept the terms of this agreement as herein set forth, on or before September 1, 1919.

In the event that said second party shall elect to accept the terms of this agreement, it is understood and agreed upon by the parties hereto that the said bonds above mentioned, in the event that bonds are issued, are to be secured by a first mortgage upon all of the assets of said proposed new corporation to be formed, and the total amount of bonds to be issued by said new corporation is not to exceed sixty per cent (60%) of the value of the assets transferred to the new corporation.

The party of the first part covenants and agrees that during the life of this option it will not intentionally or substantially depreciate the assets of said company, and, in the event that said second party elects to accept the terms of this agreement, that the assets of said company shall not be intentionally or substantially depreciated until such time as this agreement is fully performed.

It is mutually agreed and understood between the parties hereto that the said second party shall have the right, either in person or by a representative to be selected by him, to verify the value of the assets of said company by an appraisal and audit of the property, books of account, and records of the company, and that said first party will produce a financial statement showing the conditions of its business as of June 1, 1919, certified to as to its correctness by the president and treasurer of said company, on or before June 15, 1919.

TRAVIS GLASS COMPANY,
By H. E. TRAVIS,
President.

Exhibit B.

NEW YORK, *July 26, 1919.*

This contract made and entered into this 26th day of July, 1919, by and between I. T. Axton, Louisville, Kentucky, party of the first part, and the Travis Glass Company, Clarksburg, W. Virginia, party of the second part, witnesseth:

That for and in consideration of one hundred ($100.00) dollars cash in hand paid by the party of the first part to the party of the second part, the option given by the party of the second part to the party of the first part, expiring on or about September 1st, 1919, is hereby amended so that the cash consideration for the purchase of the entire capital stock and assets of the Travis Glass Company, of Clarksburg, W. Virginia, is changed from five hundred thousand ($500,000) dollars to four hundred thousand ($400,000) dollars.

All other terms and conditions of said option, expiring on or about September 1st, 1919, are to remain in full force and effect.

Witness our hands this day and date above mentioned.

I. T. AXTON,
TRAVIS GLASS CO.,
H. E. TRAVIS, *Treas.*

Exhibit C.

COLUMBUS, OHIO, *May 24, 1919.*

This contract made the 24th day of May, 1919, by and between O. P. Lamb, J. W. Seidensticker, Wm. Seidensticker, Louis Seidensticker, Frank Roth, C. M. Tigner, Mary E. Tigner, L. E. Tigner, all of Columbus, Ohio, Watson Pickard, R. M. Lamb of Mt. Vernon, Ohio, parties of the first part, owners of entire stock of the Essex Glass Company of Ohio, and 252 shares of the 300 shares of the Essex Glass Company, Inc., of New York, parties of the first part, and I. T. Axton, of Louisville, Kentucky, party of the second part, witnesseth:

For and in consideration of $3,000.00, cash in hand paid, receipt of which is hereby acknowledged, parties of the first part hereby give party of the second part or his assigns option to purchase all of the stock owned by parties of the first part in both of the above-mentioned companies for the sum of $600,000 cash, or for $325,000 cash and $325,000 in bonds of company which may be formed; above bonds subject to 7% interest.

This option is to run ninety days from June 1st, 1919, and is subject to option given by parties of the first part to one J. P. Greer, Waterbury, Conn., May 5th, 1919.

It is agreed that the assets and liabilities of the Essex Glass Company of New York shall be liquidated when party of the second part directs in event he exercises this option, but that party of the second part will not participate in the assets of said company except the name, good will, contracts and all other intangible assets; neither shall he be liable for its liabilities.

During the life of this option, party of the second part, or parties he may select, shall have access to the books, plants, contracts,

and all other property both tangible and intangible of the above-mentioned companies to make such investigation as he may deem necessary.

No contracts will be cancelled by either company without consent of second party during the life of this option.

It is agreed that no appreciable change shall be made in the assets and liabilities of the above-mentioned companies during the life of this option.

In event party of the second part exercises this option the $3,000 above mentioned shall apply on the purchase price.

Witness our hands this day and date above mentioned.

WATSON PICKARD.
CHAS. M. TIGNER.
R. M. LAMB.
J. W. SEIDENSTICKER.
MARY E. TIGNER.
L. E. TIGNER.
FRANK ROTH.
LOUIS SEIDENSTICKER.
WM. SEIDENSTICKER.
O. P. LAMB.
I. T. AXTON.

By C. M. TIGNER, *Attorney in Fact.*

Exhibit D.

This agreement, made and executed in duplicate this thirtieth day of May, nineteen hundred and nineteen, by and between *Lockport Glass Company*, of Lockport, New York, party of the first part, and I. T. Axton, of the city of Louisville, Kentucky, party of the second part, witnesseth:

The said party of the first part, for and in consideration of the sum of one dollar ($1.00) to it in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, does hereby covenant and agree to and with the party of the second part that it will sell and deliver to the party of the second part all of the capital stock of the company above mentioned upon the further payment of the sum of five hundred thousand dollars ($500,000) in cash, or, at the option of the said party of the second part, one hundred and fifty thousand dollars ($150,000) in cash, one hundred and fifty thousand dollars ($150,000) of seven per cent (7%) cumulative preferred stock, preferred both as to dividends and assets, in the event of dissolution or liquidation, or seven per cent (7%) bonds and three hundred thousand dollars ($300,000) of common stock of a company to be organized for the purpose of taking over this and other companies engaged in the milk bottle business, provided that the party of the second part shall elect to purchase all of said stock of said company and accept the terms of this agreement as herein set forth, *on or before September 1, 1919.*

In the event that said second party shall elect to accept the terms of this agreement, it is understood and agreed upon by the parties hereto that the said bonds above mentioned, in the event that bonds are issued, are to be secured by a first mortgage upon all of the assets of said proposed new corporation to be formed, and the total amount of bonds to be issued by said new corporation is not to exceed sixty per cent (60%) of the value of the assets transferred to the new corporation.

The party of the first part covenants and agrees that during the life of this option it will not intentionally or substantially depreciate the assets of said company, and, in the event that said second party elects to accept the terms of this agreement, that the assets of said company shall not be intentionally or substantially depreciated until such time as this agreement is fully performed.

It is mutually agreed and understood between the parties hereto that the said second party shall have the right, either in person or by a representative to be selected by him, to verify the value of the assets of said company by an appraisal and audit of the property, books of account, and records of the company, and that said first party will produce a financial statement showing the condition of its business as of June 1, 1919, certified to as to its correctness by the president and treasurer of said company, on or before June 15, 1919.

LOCKPORT GLASS COMPANY,
By J. M. WOODWARD, *Secretary.*
R. S. KEEP, *President.*
F. P. LUCE, *Treas.*

Exhibit E.

This agreement, made and entered into this 4th day of August, 1919, between Ralph S. Keep, personally and as agent for Geo. E. Greene, Fred P. Luce, personally and as agent and attorney for Walter H. Wright and J. M. Woodward, of the city of Lockport, N. Y., parties of the first part and I. T. Axton of the city of Louisville, Ky., party of the second part, witnesseth:

In consideration of the sum of five thousand dollars ($5,000.00), the receipt whereof is hereby acknowledged, the parties of the first part agree to sell to said second party, the number of shares of the capital stock of the Lockport Glass Company, set opposite their respective names, being in the aggregate 1662 shares of the common stock out of an entire issue of 1767 shares, and also agree to secure and deliver said remaining 105 shares of said common stock, for the sum of four hundred and twenty-five thousand dollars ($425,000.00); said first parties also agree to secure and deliver the outstanding 110 shares of the preferred stock of said Lockport Glass Company for eleven thousand five hundred and fifty dollars ($11,550.00) and accrued dividends. Said second party shall have until the first day of September, 1919, to complete and carry out this option, and thereafter the same shall be void. Said second party shall at the time the said option is exercised pay off and return the notes and bonds of said company given to secure the payment of borrowed money or make some other satisfactory arrangement whereby payment will be guaranteed to the satisfaction of the persons holding said securities.

The first parties agree not to do or suffer anything to be done between this date and the date of the carrying into effect of this option whereby the assets of said company will be diminished or its liabilities increased and its capital thereby impaired except transactions in the ordinary course of business; and also agree not to enter into large or extensive contracts for the manufacture and sale

of milk bottles at prices lower than those standard and prevailing in the milk-bottle trade.

Sale and delivery of the stock and payment of the purchase price shall be made at the office of the company at Lockport, N. Y., and the consideration hereof, namely, $5,000.00, applied on the purchase price. In case this option shall not be carried out then said consideration shall be forfeited.

This agreement supersedes and takes the place of another agreement made and entered into with said I. T. Axton under date of May 30, 1919.

Witness the hands of the parties hereto the day and year first above written.

Ralph S. Keep	688	shares.
George E. Greene by R. S. Keep	532	"
F. P. Luce	170	"
W. H. Wright by F. P. Luce	100	"
J. M. Woodward	172	"
I. T. Axton	1,662	"

STATE OF NEW YORK,
County of Niagara, ss:

On this 4th day of August, 1919, before me the subscriber, personally appeared, Ralph S. Keep, personally and as agent for Geo. E. Greene, Fred P. Luce, personally and as agent and attorney for Walter H. Wright, J. M. Woodward and I. T. Axton, to me known and known by me to be the same persons described in and who executed the foregoing instrument and duly acknowledged that they severally executed the same.

G. C. LEWIS,
Notary Public.

Exhibit F.

Certificate of Incorporation of Sterling Glass Company, Inc.

We, the undersigned, all being persons of full age, and at least two-thirds being citizens of the United States, and at least one of us a resident of the State of New York, desiring to form a stock corporation, pursuant to the provisions of the business corporations law of the State of New York, do hereby make, sign, acknowledge, and file this certificate for that purpose, as follows:

First. The name of the proposed corporation is Sterling Glass Company, Inc.

Second. The purposes for which it is to be formed are: To manufacture glass and glassware of any and all kinds and descriptions; to manufacture such machinery and appliances as are or might be useful in connection with the preparation of glassware; to produce, as opportunity offers, whatever crude materials are necessary for the manufacture of glass; to buy such lands and erect such buildings as are needed for the purpose of carrying on the business of the corporation, to sell and dispose of the same as authorized by law; to buy, own, and sell the plant or plants of other companies heretofore carrying on a similar business; to buy, own, hold, sell, exchange,

underwrite, pledge, and deal in stocks, bonds, mortgages, trust receipts, debentures, and other securities of corporations, both domestic and foreign, engaged in a similar business; to apply for, obtain, purchase or otherwise acquire, and to register, hold, own, use, sell, or otherwise dispose of any and all trade-marks, trade names, processes, formulæ, trade secrets, inventions and devices of all kinds, whether secured under letters-patent of the United States or of any foreign country; and to prepare, manufacture, buy, sell, import, export, and generally deal in and with glass and glassware and whatever crude materials are necessary for the manufacture thereof.

Third. The amount of the capital stock is six hundred thousand dollars ($600,000).

Fourth. The number of shares of which the capital stock shall consist is six thousand (6,000) of the par value of one hundred dollars ($100) each, and the amount of capital with which said corporation will begin business is six hundred dollars ($600).

Fifth. Its principal business office is to be located in the city of Elmira, in the county of Chemung and State of New York.

Sixth. Its duration is to be perpetual.

Seventh. The number of its directors is to be four.

Eighth. The names and post-office addresses of the directors for the first year are as follows:

Names.	Post-office addresses.
Hubert C. Mandeville	Elmira, N. Y.
Leo Waxman	Elmira, N. Y.
Ely W. Personius	Elmira, N. Y.
William P. Rodgers	Elmira, N. Y.

Ninth. The names and post-office addresses of the subscribers to this certificate and a statement of the number of shares of stock which each agrees to take in the corporation are as follows:

Names.	Post-office address.	Number of shares.
Hubert C. Mandeville	Elmira, N. Y.	2
Leo Waxman	Elmira, N. Y.	2
Ely W. Personius	Elmira, N. Y.	2
William P. Rodgers	Elmira, N. Y.	2

In witness whereof, we have made, signed, acknowledged, and filed this certificate in duplicate.

Dated this 23d day of August, 1919.

HUBERT C. MANDEVILLE.
LEO WAXMAN.
ELY W. PERSONIUS.
WILLIAM P. RODGERS.

STATE OF NEW YORK,
County of Chemung, ss:

On this 23d day of August, 1919, before me personally came Hubert C. Mandeville, Leo Waxman, Ely W. Personius, and William P. Rodgers, to me known and known to me to be the persons described in and who executed the foregoing certificate and severally duly acknowledged to me that they executed the same.

JOSEPH W. BUCK,
Notary Public.

Exhibit G.

Agreement made this 28th day of August, 1919, between Francis E. Baldwin, of the first part; William Ford, of the second part; Edward D. Libbey, of the third part, and Sterling Glass Company, Inc., hereinafter called "Sterling Company," of the fourth part, witnesseth:

Whereas Baldwin, Ford, and Libbey are each making certain notes to the Guaranty Trust Company, as follows:

Baldwin is making a note for six hundred fifty thousand dollars ($650,000) with collateral security of two thousand (2,000) shares of the common stock of the Woodbury Glass Company and five hundred (500) shares of the common stock of the Travis Glass Company, being all the outstanding stock of each of said companies:

Libbey is making a note of four hundred eighty thousand dollars ($480,000) with one thousand (1,000) shares, being all the outstanding capital stock of the Essex Glass Company, as collateral; and

Ford is making a note for four hundred eighty thousand dollars ($480,000), with one thousand seven hundred sixty-two shares (1,762) of the common stock of Lockport Glass Company and one hundred ten (110) shares of its preferred stock, as collateral, together with eighty-nine thousand dollars ($89,000) par value of bonds and one hundred seventeen thousand dollars ($117,000) of notes of said company; all of said notes being given on demand and amounting in all to one million six hundred ten thousand dollars ($1,610,000); and

Whereas the Sterling Company is a corporation organized under the laws of the State of New York, with an authorized capital stock of six hundred thousand dollars ($600,000) of which five hundred thousand dollars ($500,000) has been paid in in cash, and Libbey and Baldwin have each contributed one-half (½) of said capital stock; and

Whereas Libbey, Baldwin, and Ford have each endorsed the notes of the others, so that all are liable on all of the notes, either as maker or endorser; and

Whereas it is the purpose of the parties hereto that at a later date a permanent company be organized to take over the ownership of the plants and assets of all the said companies, together with the Thatcher Manufacturing Company, of Elmira, New York, and that said permanent company shall have such capital and be organized in such form as may be agreed upon by the parties hereto, and it is agreed that the said stocks shall be held together and shall not be sold by either of the parties hereto without the consent of the others; and

Whereas Libbey has entered into this agreement in contemplation of the purchase by him or for his account of the so-called "Hartford-Fairmont" patents covering certain automatic feeding devices and glass-blowing machinery now owned by Hartford-Fairmont Company, or under the control thereof; and

Whereas it is agreed between the parties hereto that, if the parties do not mutually agree upon the form and capitalization of the company and the details in respect thereto, Ford and Libbey may

retire from Sterling Company and from this transaction, at their option, and shall in that event be released from all liability as maker or endorser of said note, and Libbey shall be repaid the two hundred fifty thousand dollars ($250,000) or other amounts contributed to the capital stock of Sterling Company; and

Whereas Sterling Company undertakes to assume and does hereby assume all liability of the other parties hereto upon the said notes, whether maker or endorser.

Now, therefore, in consideration of the endorsements above named and of the mutual covenants herein contained and of one dollar ($1.00), receipt whereof is hereby acknowledged by each of the parties hereto, it is agreed as follows:

First. That Sterling Company hereby undertakes to and does hereby save the other parties to this agreement and each of them harmless from any and all liability or obligation by reason of the making or endorsing of any of the notes above recited, and upon the payment of the said note all of the collateral thereto shall become the property of Sterling Company.

Second. That until the formation of the permanent company above recited, all of the stock and collateral mentioned above shall be held together as one unit so that the said permanent company may be formed either by merger or by sale of assets as may be determined, and that none of the parties hereto shall sell or dispose of the said stocks or collateral.

Third. That if the so-called "Hartford-Fairmont" patents, or control thereof, shall not be acquired by Libbey within six months of the date of this agreement, or if the parties hereto shall fail to agree upon the form, capitalization, or organization of the permanent company hereintobefore referred to, Libbey may at any time upon service of ten (10) days' written notice upon Baldwin retire from this agreement. In the event of Libbey's retirement as aforesaid, Baldwin agrees to assume all liability hereunder, and all liability upon the said notes or in connection therewith, of each and all of the other parties hereto; to procure the release of the said other parties from said notes within four (4) months from the date of the aforesaid notice; to hold harmless and indemnify each and every of the other parties hereto from and against any and all liability for or on account of the aforesaid notes; and to repay to Libbey within four (4) months of the date of the service of the aforesaid notice upon him the two hundred fifty thousand dollars ($250,000) aforesaid, invested by Libbey in the capital stock of Sterling Company, and all other amounts which Libbey may have so invested or advanced to Sterling Company, with interest on each such investment and advance from the date thereof at the rate of six per cent (6%) per annum.

Fourth. Upon the repayment of said moneys and the release of said endorsements and liability, Ford and Libbey hereby release to Baldwin any and all interest in the stock of the Sterling Glass Company, and agree to transfer the same to his nominee, and Baldwin may proceed with the organization of such permanent company and with the disposition of Sterling Company and its assets, in such manner as Baldwin may see fit, free from all obligations under this agreement.

Fifth. This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, and assigns of the first, second, and third parties, and the successors and assigns of the fourth party.

Sixth. This agreement supersedes and terminates an agreement made between Baldwin, Ford, and Sterling Company, dated August 28, 1919, and approved and joined in by Libbey, by C. J. Wilcox, secretary.

In witness whereof, the parties have set their hands the day and year first above written.

F. E. BALDWIN.
E. D. LIBBEY.
WILLIAM FORD.
STERLING GLASS COMPANY, INC.,
By H. C. MANDEVILLE, *President.*

Exhibit H.

SEPTEMBER 2, 1919.

Mr. F. E. BALDWIN,
Elmira, N. Y.

Re *Sterling Glass Company, Inc., and associate companies.*

MY DEAR MR. BALDWIN: While the happenings of August 28th and 29th are fresh in my mind, I am writing you this letter for our mutual records and am sending a copy to Mr. Libbey for his records.

Herewith I hand you the minute book of the Sterling Glass Company, Inc., showing the articles of incorporation, by-laws and minutes to date, including the minutes of the meeting held to-day rectifying and confirming all that has been done to date.

I am about to issue the stock; $250,000.00 is to be issued as you may nominate. Please give me the names of the stockholders and the name of two persons to be directors. The present directors are Mr. Personius, Mr. Waxman, Mr. Rodgers, and myself. The present officers are myself, president; Personius, vice president; Waxman, secretary; and Rodgers, treasurer. Please let me know your views as to the permanent officers. The present officers and directors will remain until you are ready to have permanent directors and officers installed.

In the minute book you will find copies or originals of all contracts that have been executed to date to which the Sterling Glass Company, Inc., is a party.

With the minute book you will find the deposit slips, check book and bank book of the Sterling Glass Company, Inc., with the Guaranty Trust Company. I think they should be kept in your office and that your Mr. Collins should make some bookkeeping record to avoid confusion in the future.

With the minute book you will find the deposit slip, check book, drawing checks, etc., to be sent Mr. Hatcher, of the Guaranty Trust Company, together with a full set of Ernst & Ernst reports on the various companies which you have.

You should receive from Mr. Axton copies of the notes dated August 29, 1919, signed by Stirling Glass Company, Inc., and yourself, for $50,000.00 and $57,000.00, respectively.

With the minute book I enclose a folder containing all the statements as to resources, earnings, etc., and all other papers that have come into my possession. I am doing this to have your files complete. When the seal and stock books are received I shall send them to Mr. Collins to be kept with these papers.

You should receive from the Guaranty Trust Company a letter giving you the dates and amounts of all the checks drawn by it against the deposit to the credit of the above company. My figures show that I deposited $500,000.00 and the proceeds of the notes amounted to $1,610,000.00. The amounts of the notes and the collateral to each are set out in the contract between Mr. Ford, yourself, and the Sterling Glass Company, Inc., dated August 28th, which contract was approved, in your behalf, by Mr. Wilcox. This made a total deposit of $2,110,000.00. All the above notes were made on demand and are shortly to be renewed by six months notes with one renewal. The notes were with interest and were dated August 28th.

My record of the check is—that the check given the Woodbury plant was $434,600.00; Travis plant $400,000.00; Essex plant $600,000.00; Lockport plant, including bonds and notes (of which a list is contained in the letter of Lockport Glass Company of August 23, 1919, which is included among the papers handed you) $639,814.49. This makes a total of checks drawn $2,074,414.49. These figures are to be confirmed and are subject to correction by the letter to be received from the Trust Company. It was hard to get the figures accurately under the circumstances. This should leave $35,585.51 balance in the Trust Company.

Before the disbursement of money began the amounts to be paid out were: Essex $600,000.00; Travis $400,000.00; Lockport $436,500.00, plus the bonds, $89,000.00 and notes $117,000.00; Woodbury $600,000.00; Axton $50,000.00.

The letter from the Trust Company will give the amounts of the final computations which were made by the Trust Company. We were neither of us in the directors' room at the final closing, when the interest was computed and the amount of notes, etc., determined, so I can not give the accurate figures, but they will appear in the letter.

There is $8,400.00 yet to be paid out for some stock that is to come in with a draft attached. A $24,000.00 commission to the Guaranty Trust Company is yet to be billed by them and paid. There were some corrections for moneys that had already been paid on options which will appear in the letter. Axton took as a part of the price of his stock two notes, one of $50,000.00 and the other $57,000.00, which notes were signed by Sterling Glass Company, Inc., and by Mr. F. E. Baldwin, copies of the notes to be sent by Axton.

The resignations of all the officers and directors of the various companies were taken, to be exercised at your option. As you visit each plant, please advise the Trust Company whom you wish as your board of directors, where the stock should be transferred and by whom, and the Trust Company will send the stock on for transfer accordingly. All except qualifying shares will be transferred to a nominee of the Trust Company. The accounting methods of each plant should be put upon the same basis as the Thatcher Mfg. Company as soon as convenient.

As soon as we have some figures I should like to take up the question of a permanent organization to include the Thatcher Mfg. Company, with Mr. Libbey, Mr. Ford, and yourself, and make up a suggested plan which we will then submit the Guaranty Trust Company and possibly Campbell, Heath & Company, so as to have two parties bidding. I called on Mr. Pepper and Mr. Campbell, of this firm, and they feel that they are entitled to a chance because of the time they spent with Mr. Axton and the fact that they had the money ready for him; but he could not bring his parties to the terms offered. I think we should have this new company all ready by the Easter dividend period so that we can put the new preferred stock on the market at that time and realize enough to clean up all the above indebtedness.

The resignations above mentioned are to remain with the Guaranty Trust Company, as do all the stock, bonds, and notes, all of which will be described in the letter and are totalled in the contract between Baldwin, Ford, and Sterling Glass Company, Inc., of the 28th of August, 1919.

The Sterling Glass Company, Inc., has a contract with Mr. Axton by which, in consideration of the services he has rendered in getting the options and of services to be rendered as called upon by the Sterling Glass Company, Inc., he is to be paid $100,000.00, February 1, 1920, without interest. The Thatcher Mfg. Co., by F. E. Baldwin, treasurer, guarantees the faithful performance of the contract and the payment of this money.

The Thatcher Mfg. Co., for $15,000.00 already paid, promises to pay $85,000.00 more on or before the 1st of July, 1920, without interest. In consideration of this all the Hamilton stockholders agree to keep out of the milk-bottle business, except in Allegheny County, Pennsylvania, for a period of ten years from January 1, 1920. For $10,000.00, to be paid January 1, 1920, they are to sell and deliver the Hartford-Fairmont feeder machine and licenses. The Thatcher Manufacturing Company made this agreement, and the transfer and agreement runs to it.

Attached hereto is a letter from the Knowles-Main appraisal bureau, dated the 30th of August, 1919, regarding their proposition to appraise the Thatcher Manufacturing Company, also a letter from Mr. Axton, August 29, 1919, asking for a check of $4,333.33 for option money advanced by him. I have written both that I have referred the letters to you.

Originals of all the above contracts are handed you herewith.

Very truly yours,

(Signed) H. C. MANDEVILLE.

Exhibit 1.

TOLEDO, OHIO, *December 11, 1919.*

To Mr. FRANCIS E. BALDWIN,
Thatcher Manufacturing Company, Elmira, N. Y.

In accordance with the terms of a contract, entered into August 28, 1919, between F. E. Baldwin, of the first part, William Ford, of the second part, and Edward D. Libbey, of the third part, and the Sterling Glass Company, Incorporated, I hereby desire to notify

you that, as the plan of reorganization of the companies purchased under this agreement does not meet with my approval, I wish to retire from this agreement.

In accordance with the above notice, I shall expect to be released from further liability under the notes covered by this agreement, which were given to the Guaranty Trust Company of New York.

(Signed) WILLIAM FORD.

Exhibit J.

EDWARD DRUMMOND LIBBEY,
Toledo, Ohio, December 11th, 1919.

To FRANCIS E. BALDWIN,
Thatcher Manufacturing Company, Elmira, N. Y.

In accordance with the terms of a contract, entered into August 28, 1919, between F. E. Baldwin, of the first part, William Ford, of the second part, and Edward D. Libbey, of the third part, and the Sterling Glass Company, Incorporated, I hereby notify you that, as the plan of reorganization of the companies purchased under this agreement does not meet with my approval, I desire to retire from this agreement.

In accordance with the above notice, I shall expect to be released from further liability under the notes covered by this agreement, which were given to the Guaranty Trust Company of New York, and shall expect to be reimbursed for the sum of two hundred and fifty thousand dollars ($250,000) advanced for the capital stock of the said Sterling Glass Company, Incorporated; all to be accomplished not later than April 12, 1920.

(Signed) E. D. LIBBEY.

Exhibit K.

ANNUAL REPORT TO DIRECTORS AND STOCKHOLDERS OF THATCHER MANUFACTURING COMPANY.

This has been the most eventful year in the history of Thatcher Manufacturing Company. The winter of 1917 and 1918 was a very mild winter throughout the entire country. There were no bottles broken by freezing or lost in the snow. Prior to the signing of the armistice all milkmen had in large stocks, providing against increase in price and also the shortage in winter shipments which had affected them seriously the winter before.

The armistice was signed in November. We had in shipping instructions so that our sales kept up until the first of January, but the orders and shipping instructions fell off after the armistice, and the first six months business of 1919 was about $150,000 less than for the same period in 1918.

To analyze the business in different sections shows rather strange results; for example, the business in Philadelphia territory increased

$30,000; our business for the New York City territory and New England territory combined broke even, one of them increasing about $3,000 and the other lost about $3,000. Our sales around through the East show a slight increase. Our great shrinkage was in the West and principally in Chicago. I know, however, that our shrinkage was not as much in comparison as the shrinkage of our competitors, still as a rule the price of milk bottles was maintained by our competitors and strictly maintained by us, because there has been a gradual increase in the cost of materials and labor.

During the last six months of 1919 we have been badly crowded with orders, and our sales for the year's period were only about $50,000 less than for the year 1918.

During the present winter we are having more trouble to keep our factories in operation than we had during the war period, and never was in a worse condition than we are at the present time. If it had not been for coal strikes we would have manufactured more bottles this year and sold more than the year 1918. While we did not manufacture quite so many gross, we did manufacture a larger percentage of quart bottles, and therefore packed more pounds of metal. The cost per pound at Kane, where we decreased very materially was in 1919 period $.022741; in the 1918 period $.021784, a slight increase. In Streator, where we increased the production, the cost per pound was $.022555 in 1919 against $.025417 in 1918. In Elmira, where we increased our production very materially, our cost per pound in 1919 was $.019071 against $.028096, a much larger decrease. We were only able to operate two (2) furnaces because of lack of coal at the Elmira plant.

Our net earnings for the year 1919, after all deductions for depreciation, interest, Federal income and profit taxes, are $236,838.58, as against $158,930.78 for 1918. We paid out in dividends during the year $100,147, leaving to be carried over as net addition to undivided profits $136,687.58. Our net earnings for the first six months period of 1919 was $69,415.51. Our net earnings for the last six months period was $165,419.07. If it had not been for the coal strike and trouble with getting material, our net earnings for the last period would have been much larger.

The ratio of the current assets to the current liabilities on December 31, 1919, was $2.16 to $1.00. The auditors said it would have been much larger if it had not been for extra dividends to stockholders and redemption of bond No. 169.

There are now outstanding at the present time of our bonds $149,000. One $500.00 bond has been purchased since the first of January. We have reserved for depreciation $715,811.78 and we have surplus and undivided profits of $763,304.69. We own $260,000 of Liberty and Victory bonds; $160,000 of these bonds have been paid for, and a $100,000 note repreesnts the purchase of the last $100,000. Our appraisal value of property with depreciation deducted, and not taking into consideration good will or the value of our contracts and license, or in other words, tangible assets, makes our common stock at the close of business December 31st worth $222 per share.

We invested from our earnings $150,000 in the stock of the Sterling Glass Company, and have a note outstanding for $100,000 for the balance of our investment of $250,000 in that company. If we had not made that investment in stock there would be no notes out

against our company. Our notes at the present time amount to $230,000; $100,000 for "Victory" bonds and $100,000 for the balance due for the purchasing of $250,000 of Sterling Glass Company stock and $30,000 that we issued in advance money to different companies that we purchased.

At the time of the report we had advanced to the Travis Glass Company, the Woodbury Glass Company, and the Sterling Glass Company $103,249.60. We received from the Essex Glass $75,000, leaving a balance of $28,249.60. We made a further advance January 2nd of $100,000 to the Sterling Glass Company.

I simply mention these figures to show that Thatcher Manufacturing Company was in a very comfortable position financially and every other way.

During the year, starting, I believe, in April, negotiations were held in regard to the merging of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the Woodbury Glass Company, and the purchasing of the Hartford-Fairmount feeder and milk-bottle machine and milk-bottle business of the J. T. and A. Hamilton Company. These parties, except the Woodbury Glass Company, held the exclusive licenses for the Hartford-Fairmount feeder and machines for the manufacture of milk bottles in the U. S. The Woodbury Glass Company had a nonexclusive license for the manufacture of condiment bottles. After several months negotiations and interviews with the Owens Bottle Machine Company, and obtaining their consent and advice that we purchase these companies and thereby obtain the rights of the Hartford-Fairmount feeders, upon the 29th day of August, we purchased the capital stock of the companies named and the Hartford-Fairmount feeder and machines and milk-bottle business of the J. T. and A. Hamilton Company.

The money was borrowed for the making of this purchase of the Guaranty Trust Company of New York. We were assisted in obtaining same by E. D. Libbey, president of the Owens Bottle Company and Mr. William Ford, a large stockholder in the Owens Company.

We conducted these companies under their own management until the first of January. The first of January we brought the entire business to Elmira, and same is being now managed and directed by Thatcher Manufacturing Company.

The opportunity to purchase these plants, I can not help but feel was providential. It puts us in the forefront, as we never have been before in the manufacture of milk bottles. With the Hartford-Fairmount machines we can manufacture bottles at least 50¢ per gross cheaper than we can with the Owens machines.

We are increasing our organization and perfecting it, and while it will be some time before it is whipped into satisfactory shape, it seems to us that it is being worked out quite satisfactorily indeed.

In the negotiations for the purchase and the purchasing and the arranging for the financing of the company, Mr. H. C. Mandeville has given a very large portion of his time and has been of very great assistance and value. While the matter of the financing has not been definitely settled, we believe that it will be in a very short time now.

Personally, I wish to express very great satisfaction for the fact that Mr. Mandeville is to be with us as a part and parcel of Thatcher Manufacturing Company. I recommend that our by-laws be changed

and that we have two vice presidents, Mr. Mandeville to be elected as one of the vice presidents.

During the year 1919 the organization of Thatcher Manufacturing Company has worked together in perfect harmony for which I wish to express my appreciation and also wish to express my appreciation which has more meaning than mere words can convey, for the assistance and sympathy and cooperation of the entire board of directors.

Everything indicates that Thatcher Manufacturing Company will develop into one of the very large bottle manufacturing companies in the country.

I recommend that a 3% dividend be declared upon our common stock, payable April 1st.

Respectfully submitted.

February 18, 1920. (Sgd.) F. E. BALDWIN,
President.

Exhibit L.

Agreement entered into this 10th day of April, 1920, between Francis E. Baldwin (hereinafter called the "seller"), party of the first part, and Hemphill, Noyes & Co., a copartnership doing business in the borough of Manhattan, city of New York, and Bonbright & Company, Incorporated, a corporation organized and existing under and pursuant to the laws of the State of New York (hereinafter called the "buyers"), parties of the second part.

Whereas the seller represents a control of a least two-thirds or more of the outstanding preferred stock and two-thirds or more of the outstanding common stock of the Thatcher Manufacturing Company, a corporation of the State of New York (hereinafter referred to as the "corporation"), for the purpose of carrying out the plan hereinafter set forth and entering into this agreement; and

Whereas the plan is as follows:

I.

The seller proposes to cause the corporation to increase its common stock (hereinafter called the "existing common stock"), which now consists of ten thousand shares of the par value of one hundred dollars each, to sixteen thousand two hundred and fifty shares of the par value of one hundred dollars each, and to cause said additional six thousand two hundred and fifty shares to be purchased from the corporation for cash at par; and immediately thereafter to cause the corporation to alter and amend its certificate of incorporation in accordance with the laws of the State of New York so that the corporation will have an authorized capital stock, consisting of twenty-five thousand shares of eight per cent cumulative preferred stock of the par value of one hundred dollars each (provided that the authorized amount of preferred stock shall consist of thirty thousand shares if the value of the assets of the corporation as finally approved by the buyers, will justify such increase under the provisions of the stock corporation law of the State of New York), and one hundred and thirty thousand shares of common stock without nominal or par value in place and stead of the present authorized and issued capital stock

of the corporation as increased as above provided, which will, immediately prior to said reorganization, consist of two thousand five hundred shares of preferred stock of the par value of one hundred dollars each (hereinafter referred to as the "existing preferred stock"), and sixteen thousand two hundred and fifty shares of common stock of the par value of one hundred dollars each.

II.

The new preferred stock to be authorized as hereinbefore provided (hereinafter referred to as the "preferred stock") will be subject to the following preferences and provisions:

(A) The preferred stock shall bear cumulative dividends from the date of the filing of its certificate of reorganization, at the rate of eight per cent per annum, payable quarterly;

(B) If at any time for a period of thirty days, the corporation shall not have issued and oustanding any bonds, notes, or other corporate evidences of indebtedness maturing more than one year from the date thereof, then and in such event and on or before the first day of the next succeeding month of April, and on or before the first day of April in each and every year thereafter (until all the preferred stock shall have been redeemed) there shall be set apart and credited to a sinking-fund account an amount equal at least to 15% of the net profits of the corporation arising from the earnings of the business of the corporation for the respective preceeding twelve months' periods ending on the thirty-first day of December, as such net profit (after allowance for maintenance and depreciation) shall be set forth or stated in the books of account of the corporation, after first deducting therefrom an amount equivalent to eight per cent of the par value of the preferred stock outstanding on such thirty-first day of December. The amount so determined shall be set aside on the first day of April in each such year from and only from the surplus profits arising from the business of the corporation remaining after full cumulative dividends on the preferred stock outstanding shall have been declared and paid or provided for, including all dividends accrued or in arrears, and this obligation shall be cumulative, so that if, in any year or years, said remaining surplus profits shall be insufficient to permit the whole amount required as aforesaid to be set aside, or if, for any reason, such full amount shall not be set aside, the deficiency shall be made good out of the surplus profits of the succeeding year or years before any dividends shall be declared or paid upon or set apart for the common stock.

All moneys required to be set aside pursuant to the provisions of this clause on the first day of April in any year shall be applied as soon as practicable, but within six months from the date on which they shall have been set aside, to the purchase of preferred stock at public or private sale, if obtainable, at not exceeding the redemption price hereinafter fixed. If and to the extent that such moneys are not so applied, they shall be applied to the redemption of preferred stock as hereinafter provided, on the earliest date permitted by this certificate and by any regulations or restrictions of the New York Stock Exchange upon the right of redemption which may be incorporated in the by-laws of the corporation, and until the call for such redemp-

tion said amounts shall be applied to further purchases of the outstanding preferred stock, if and to the extent that the same can then be purchased as aforesaid at not exceeding the redemption price. The amounts set aside for the purpose of this clause shall not be made the basis of a stock or cash dividend or otherwise distributed among the holders of the common stock, nor shall said amounts be depleted or used in any other way which would interfere with the application thereof as herein required.

Preferred stock redeemed or purchased under any provision of this clause shall not be reissued, and no preferred stock shall be issued in lieu thereof or in exchange therefor, and surplus profits used as a basis for the purchase or redemption, or growing out of the purchase, redemption or resulting reduction of preferred stock, shall, so long as any of the preferred stock shall be outstanding, be deemed to be capitalized and shall be unavailable as a basis for dividends payable otherwise than in common stock, or for other charges against surplus.

If in any year the corporation shall have set aside and applied as aforesaid out of such remaining surplus profits amounts in excess or in advance of the above requirements, the corporation shall be entitled to be credited with the amount of such excess on its obligations to set aside moneys as aforesaid in subsequent years.

For the purpose of determining and computing any amount required to be set apart for and credited to the sinking-fund account in respect of any particular period, as in this clause provided, there shall be added to the surplus profits arising from the business of the corporation for such period that proportion of the surplus profits for such period of any company a majority of whose capital stock shall be owned by the corporation (herein called "Subsidiary company") that the stock of such subsidiary company so owned shall bear to the total amount of stock of such subsidiary company outstanding. Should any amount required to be set apart for and credited to the sinking fund account on the basis of any such computation be in excess of the surplus profits of the corporation available therefor, then and in such event the corporation shall cause the subsidiary company or companies forthwith to declare and pay dividends out of its or their respective surplus profits sufficient to enable the corporation, through its stock ownership in such subsidiary company or companies, to provide for any such excess. Until the corporation shall have caused dividends to be paid in amounts sufficient to provide for any such excess, as hereinbefore provided, it shall not declare or pay any dividends upon its common stock.

(C) The preferred stock shall be redeemable at the option of the corporation upon such terms and conditions and at such price as the buyers may determine, but not in excess of 115% of the par value thereof and accrued dividends thereon, and shall be preferred as to principal upon voluntary dissolution or liquidation at the redemption price above provided, and in the event of insolvency or involuntary dissolution, at one hundred dollars per share and accrued dividends.

(D) Dividends shall not be paid upon the common stock of the corporation unless and until the corporation shall have paid all accrued dividends upon the preferred stock and shall have declared and paid or provided for the current quarterly dividend, and shall

have complied with the above clause (B) in respect of any and all amounts then or theretofore required to be set aside or applied. Subject to the foregoing provisions and not otherwise, such dividends as may be determined by the board of directors may be declared and paid on the common stock from time to time out of the remaining surplus profits arising from the business of the corporation.

(E) No holder of stock of the corporation of any class shall be entitled as such, as a matter of right, to subscribe for or purchase any part of any new or additional issue of the preferred stock or securities convertible into preferred stock, whether now or hereafter authorized, and whether issued for cash, property, or services; and no holder of the preferred stock shall be entitled as such, as a matter of right, to subscribe for or purchase any part of any new or additional issue of stock or securities convertible into stock of any class whatever, whether now or hereafter authorized, and whether issued for cash, property, or services.

It shall be provided in the certificate of reorganization that no amendment of the provisions thereof in respect of the rights and preferences of the preferred stock, as hereinbefore set forth, as between the said preferred stock and the common stock, shall be made.

III.

It shall be provided in the certificate of reorganization that there shall be issued to the holders of the certificates of the existing preferred stock of the corporatioin then outstanding, in place thereof, shares of the preferred stock, share for share, and that seventy-one thousand five hundred shares of the common stock without nominal or par value (hereinafter referred to as the "common stock") shall be issued to the holders of the certificates for the said sixteen thousand two hundred and fifty shares of the existing common stock of the corporation, in place thereof, in the proportion of four and four-tenths shares of the common stock for one share of the existing common stock.

IV.

Either before or at the time of the reorganization of the corporation as hereinbefore provided, the corporation shall acquire all of the assets and business of the following companies, to wit, Travis Glass Company, Essex Glass Company, and Lockport Glass Company, all of the shares of stock of said companies being now owned by the Sterling Glass Company, whose shares of stock are all owned by the corporation; and at the same time the corporation shall also acquire all of the common stock of the Woodbury Glass Company which is now owned by the Sterling Glass Company.

As a condition of such acquisition, the corporation shall assume all of the obligations of the aforesaid companies, which shall thereupon be dissolved.

V.

Immediately upon the filing of the certificate of reorganization of the corporation as provided by law, the seller shall cause the corporation to authorize, make, and execute an issue of two million dol-

lars principal amount of its corporate bonds (hereinafter called the "bonds"). The said issue of bonds shall be limited to two million dollars principal amount thereof; shall mature ten years after the date thereof; shall be payable, principal and interest, in gold coin of the United States of America of the present standard of weight and fineness; shall bear interest at the rate of seven per cent per annum, payable semiannually; and the principal and interest thereof shall be payable without deduction for any tax or taxes or other governmental charge (except succession or inheritance taxes, State income taxes, and such portion of Federal income taxes as shall be in excess of two per cent), which the corporation, its successors, or assigns, or any officer or fiscal agent thereof, or the trustee or trustees under the indenture providing for the issue thereof, may be required or permitted to pay thereon or to retain or to deduct therefrom, under any present or future law of the United States of America, or of any State, county, municipality, or other taxing authority therein, whether such income tax be considered a personal tax on the holders of the bonds or otherwise, all of which taxes, except as aforesaid, the corporation will covenant and agree to pay.

The bonds shall be callable in whole or in part on any interest date at least 120% of the principal amount thereof and accrued interest for the first two years from the date thereof, and thereafter at the rate of 105% of the principal amount thereof and accrued interest; provided that if the stock corporation law of the State of New York shall be amended prior to the filing of the certificate of reorganization, as in this agreement provided, so that bonds of corporations may be converted into stock during the two years immediately following the date thereof, then and in such event the bonds shall be callable at the rate of 105% of the principal amount thereof and accrued interest for the first two years from the date thereof, instead of at the rate of 120% of the principal amount thereof and accrued interest as above provided.

The bonds shall be issued under the provisions of an indenture to be made to a trustee or trustees to be selected by the buyers (hereinafter called the "trustee"), and shall contain such provisions and be in such form as the buyers shall determine.

The indenture shall contain a sinking fund under the provisions of which the corporation shall pay to the trustee thereunder the sum of fifty thousand dollars at the expiration of the first year after the date of the indenture and one hundred thousand dollars at the expiration of each year thereafter up to and including the sixth year after the date of the indenture, and one hundred and fifty thousand dollars at the expiration of each year thereafter up to and including the ninth year after the date of the indenture; provided that if, at the time when any of the aforesaid sinking-fund payments shall become due and payable, 15% of the net earnings of the corporation for the preceding twelve months shall be in excess of the sinking-fund payment then due and payable as above provided, the corporation shall thereupon pay to the trustee under the indenture a sum equivalent to such 15% of the net earnings of the Corporation in lieu of the fixed sum to be paid as above provided. For the purpose of computing the aforesaid payments, there shall be deducted from the net earnings of the corporation all interest charges and taxes.

The payment to be made by the corporation to the sinking fund at the expiration of any year as above provided, shall be reduced by an amount equivalent to the principal amount of any of the bonds which may be converted during such year into the preferred stock or the common stock of the corporation, as hereinafter provided.

The trustee under the indenture shall apply the sinking fund as rapidly as shall be reasonably practicable to the purchase of bonds at the lowest price obtainable, not exceeding 105% of the principal amount thereof and accrued interest, and for such purpose may acquire bonds from the corporation at the cost price thereof to the corporation with accrued interest thereon, or in the market at public or private sale, or may, and if so requested by the corporation shall, call for offers of said bonds by advertising as directed by the corporation or as the trustee may deem best. If the trustee shall be unable, after the expiration of two years from the date of the indenture, in the manner aforesaid, to purchase sufficient bonds to exhaust the sums at any time available as aforesaid for the sinking fund, then it shall proceed immediately to select by lot, in any usual manner in its uncontrolled discretion, so many of said bonds then outstanding as the said sinking fund will suffice to purchase on the next interest day at 105% of the principal amount thereof and accrued interest, and shall give notice by publication in a daily newspaper published and in general circulation in the city of New York for four successive weeks that the bonds so selected will be purchased for the sinking fund, such notice to specify the serial numbers and the denominations of the bonds to be so purchased, and the date of such proposed purchase, which shall be an interest payment date; and on and after the interest date so specified for their purchase, the trustee shall pay to the respective holders thereof 105% of the principal amount thereof and accrued interest to such date of purchase. All bonds acquired by the trustee for the sinking fund shall be cancelled and thereupon surrendered to the corporation.

The bonds, after the expiration of two years from the date thereof, shall be convertible at any time at the option of the holders thereof, par for par, into the preferred stock of the corporation, or, after the expiration of two years from the date thereof and at any time during the following four years, shall be convertible at the option of the holders thereof, into common stock of the corporation (instead of into preferred stock as above provided) at the rate of twenty-five shares of common stock for one bond of the principal amount of one thousand dollars, and at any time after six years from the date thereof and at any time during the following four years, shall be convertible, at the option of the holders thereof, into common stock of the corporation (instead of into preferred stock as above provided) at the rate of twenty shares of common stock for one bond of the principal amount of one thousand dollars; provided, however, that, if the bonds shall be made callable at 105% of the principal amount thereof and accrued interest instead of at 120% of the principal amount thereof and accrued interest during the first two years from the date thereof, as hereinbefore in this article provided, then and in such event the bonds shall be convertible at any time during the period of five years from the date thereof, at the option of the holders thereof, either into preferred stock of the

corporation, par for par, or into common stock of the corporation at the rate of twenty-five shares of common stock for one bond of the principal amount of one thousand dollars, and at any time during the following period of five years, at the option of the holders thereof, either into preferred stock of the corporation, par for par, or into common stock of the corporation at the rate of twenty shares of common stock for one bond of the principal amount of one thousand dollars.

The indenture shall contain a provision to the effect that, without the written consent of the holders of at least a majority of the outstanding bonds, the corporation shall not create or issue any shares of stock having preference or priority over or on a parity with the authorized preferred stock, or increase the authorized preferred stock, or increase the authorized common stock.

Should the buyers notify the seller that they will purchase the securities of the corporation as hereinafter provided, and should the buyers, contemporaneously therewith, notify the seller that it is their desire to have the bonds secured by mortgage on the property of the corporation and the properties of the Travis Glass Company, Essex Glass Company, and Lockport Glass Company to be acquired by it as hereinbefore provided, then and in such event the seller shall cause the corporation to execute a mortgage on all of its property and that of the said companies, of every kind and description whatsoever, and also on the stock of the Woodbury Glass Company to be acquired by it as hereinbefore set forth, to secure the payment of the principal and interest of the bonds; provided that, until there shall be a default in respect of the payment of the principal or interest of the bonds, or any of the covenants contained in such mortgage, the corporation shall be permitted to pledge its inventories, its accounts receivable, and all bills and notes which may be owned by it from time to time as security for any indebtedness which it may incur in the ordinary transaction of its business.

Should the buyers determine that the bonds shall be secured by mortgage as aforesaid, the bonds shall be issued subject to the provisions of such mortgage in lieu of the indenture above referred to, which mortgage shall contain the sinking-fund clause, the conversion clause, and all the other covenants and provisions in respect of the said indenture as above set forth, and shall be in form satisfactory to the buyers and shall contain such necessary and customary provisions for the protection of the bonds as the buyers shall determine, and such mortgage shall be made to a trustee or trustees to be designated by the buyers.

The mortgage shall be a first lien on all of the aforesaid property, subject only to the lien of the mortgage now outstanding of $149,500 on certain property now owned by the corporation.

Now, therefore, in consideration of the premises and the mutual covenants herein contained, and of the sum of one dollar by each of the parties hereto to the other in hand paid, the receipt whereof is hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

First. The seller agrees that the following representations constitute a part of this agreement and are the basis upon which the sale hereinafter provided for is to be made:

A. That an appraisal of the real estate, buildings, factory, machinery and equipment, tools, patterns and dies, designs and drawings, and furniture and fixtures of the corporation, the Travis Glass Company, the Essex Glass Company, and the Lockport Glass Company as of December 31, 1919, will show a valuation thereof of not less than $3,448,462.94;

B. That the consolidated balance sheet of the corporation as of December 31, 1919, made by Squires & Greenman, is substantially correct;

C. That the corporation and its aforesaid subsidiary companies have good and marketable title to all of their properties, free and clear of all incumbrances, with the exception of the lien of the aforesaid mortgage of $149,500 on a portion of the property of the corporation;

D. That the business of the corporation and its said subsidiary companies is in sound condition, the present management successful and in good standing, and that the prospects for continued profitable business are good.

Second. The seller agrees that the corporation shall not declare or pay any dividend or dividends on its existing preferred or common stock, or pay any salaries in excess of its existing salaries, or incur any indebtedness, other than in the usual course and conduct of its business, until the purchase by the buyers of the securities of the corporation as hereinbefore provided, or until the termination of this agreement.

Third. The buyers shall have the period of six weeks from the date hereof to conduct an examination of the business, property, and affairs of the corporation and its said subsidiary companies by its counsel, auditors, accountants, engineers, and other agents, and the buyers agree to proceed with the same forthwith, and the seller agrees to facilitate and cause the corporation to facilitate such examination in every way.

Should the buyers at any time before the expiration of said period of six weeks, determine that their said examinations and investigations are satisfactory to them, and that the market conditions will then warrant the acquisition by them of the securities of the corporation as hereinafter set forth, then and in such event the buyers shall notify the seller in writing that they will purchase from the corporation the bonds and common stock of the corporation as hereinafter set forth, and thereupon the seller shall forthwith carry into effect and consummate the foregoing plan for the amendment and alteration of the certificate of incorporation of the corporation, and shall cause the existing preferred and common stockholders of the corporation to exchange their stock for the new preferred and common stock of the corporation as in said plan set forth; and shall also cause the corporation to make and execute its bonds in the sum of two million dollars, either issued under the aforesaid indenture or issued under and secured by the aforesaid mortgage, as the buyers shall determine, at the earliest possible moment; and shall also forthwith cause the corporation to enter into an agreement with the buyers, whereby the corporation shall agree to sell to the buyers and the buyers shall agree to purchase from the corporation the said two million dollars principal amount

of bonds, for the sum of one million seven hundred and thirty-one thousand five hundred dollars in cash together with accrued interest thereon, and eight thousand five hundred shares of its common stock without nominal or par value, at the rate of one dollar per share.

The delivery of said bonds and stock shall be made to the buyers upon the expiration of two weeks following the filing of the certificate of reorganization of the corporation as above set forth, provided, however, that if the bankers shall require the bonds to be secured by a mortgage as hereinbefore set forth, the bonds and stock shall be delivered to the buyers and paid for by them as soon after the expiration of said two weeks as the same can be prepared, executed and ready for delivery; provided, however, that the buyers shall not be required to purchase the said bonds and stock if the bonds and stock shall not be delivered by the corporation prior to the expiration of four weeks following the filing of the certificate of reorganization of the corporation as above provided.

All such deliveries of bonds and stock shall be made by the corporation to the buyers and the buyers shall make payment therefor to the corporation at the office of Hemphill, Noyes & Co., in the city of New York.

Should the above examinations and investigations disclose that the plan, in the opinion of the counsel for the buyers, has not been or can not be legally carried into effect, or that the incorporation and present legal status of the corporation is not satisfactory to the counsel for the buyers, or that the said representations of the seller in the opinion of the buyers or his accountants, appraisers, or engineers, are not correct (which shall not, however, relieve the seller from his obligations hereunder in the event the buyers elect to proceed with the purchase), or should the buyers decide that the market conditions do not warrant the purchase by them of the aforesaid securities, or should the buyers fail, within the said period of six weeks, to notify the seller of their intention to purchase the said bonds and shares of stock, thereupon and in such event this agreement shall be and become null and void, and the parties hereto shall be under no obligation whatsoever one to the other.

Fourth. All notices which, under any of the provisions of this agreement, may be given to the buyers shall be in writing and shall be conclusively deemed to have been sufficiently given if delivered at the office of Hemphill, Noyes & Co., 37 Wall Street, city of New York, or if deposited enclosed in a sealed prepaid and registered envolope in the United States mails, in the city of Elmira, New York, addressed to Hemphill, Noyes & Co., 37 Wall Street, New York.

All notices which, under any of the provisions of this agreement, may be given to the seller, shall be in writing and shall be conclusively deemed to have been sufficiently given if delivered at the office of Francis E. Baldwin, in the city of Elmira, New York, or if deposited enclosed in a sealed prepaid and registered envelope in the United States mails, in New York City, addressed to Francis E. Baldwin, Elmira, New York.

Fifth. Should the buyers purchase the said bonds and stock of the corporation as hereinbefore provided, the seller agrees that the

corporation shall agree with the buyers to furnish them, until the payment and satisfaction of all of the bonds, with monthly statements of the sales, earnings and financial condition of the corporation, and at the end of each calendar year, to furnish a report made by a reputable firm of certified public accountants satisfactory to the buyers, or by F. W. Squires & Co.

Sixth. Contemporaneously with the purchase by the buyers of the said bonds and stock of the corporation, the seller shall cause the corporation to pay to Campbell, Heath & Co. the sum of twenty thousand dollars in payment for their services rendered to the corporation in respect of the aforesaid reorganization and purchase of securities by the buyers.

Seventh. All the expenses of the buyers in respect of the examinations to be made by them as hereinbefore provided shall be borne by the buyers, whether or not the bonds and stock of the corporation shall be purchased by the buyers, and the seller will cause the corporation to pay the fees of the counsel for the buyers in respect of the examinations to be made as hereinbefore provided, and the services which they may render to the corporation, whether or not the bonds and stock of the corporation shall be purchased by the buyers.

Eighth. This agreement shall be binding upon and inure to the benefit of the several parties hereto, their executors, administrators, successors, and assigns.

In witness whereof the party of the first part and Hemphill, Noyes & Co., one of the parties of the second part, have hereunto set their hands and seals, and Bonbright & Company, Incorporated, the other of the parties of the second part, has caused its corporate seal to be hereunto affixed and these presents to be executed on its behalf, the day and year first above written.

In the presence of:

F. E. Baldwin.
Hemphill, Noyes & Co.
Bonbright & Company, Inc.,
By A. H. Lockitt.
President.

Attest:

_____ _____,
Secretary.

Exhibit M.

Elmira, N. Y., *April 12, 1920.*

A special meeting of the stockholders of Thatcher Manufacturing Company was held at the offices of the company at Elmira, N. Y., at 9.30 o'clock in the forenoon on the 12th day of April, 1920, pursuant to the following notice:

"A special meeting of the stockholders of the Thatcher Manufacturing Company will be held on the 12th day of April, 1920, at 9.30 o'clock in the a. m. at the office of said company at No. 108 State Street, Elmira, N. Y., for the purpose of voting upon a proposition to increase its common capital stock from one million dollars, con-

sisting of ten thousand shares of the par value of one hundred dollars each, to one million six hundred twenty five thousand dollars to consist of sixteen thousand two hundred and fifty shares of the par value of one hundred dollars each.

FRANCIS E. BALDWIN, *Pres't.*
CASPER DECKER, *Sec'y.*"

The meeting organized by choosing the president of the corporation, a stockholder therein, chairman, and Carleton K. Hevener, also a stockholder, secretary of the meeting.

The secretary of the meeting presented the foregoing notice and the affidavits of Carl Steinhauser and W. H. Mandeville verified, respectively, the 10th day of April, 1920, and the 29th day of March, 1920, and showing, respectively, the publication and mailing of said notice as required by statute and the by-laws.

On motion duly seconded and unanimously carried, said affidavits were ordered spread upon the minutes immediately following the minutes of this meeting.

The secretary of the meeting reported the total number of shares of the corporation's stock authorized as $1,500,000, of which $1,248,500 were outstanding and 7,404 were present at this meeting in person and 2,114 by proxy, and that the proxies of the latter were on file and correct.

The following resolutions were then moved:

"*Resolved*, That the capital stock of this corporation as authorized at 5,000 shares of preferred stock of the par value of $100 each and 10,000 shares of common stock of the par value of $100 each, be, and it hereby is, increased to 5,000 shares of preferred stock of the par value of $100 each and 16,250 shares of common stock of the par value of $100 each, and it is further

"*Resolved*, That the chairman and secretary of this meeting and the proper officers of the corporation be, and they hereby are, directed and authorized to make, sign, certify, acknowledge, and file a certificate of the increase of this corporation's capital stock as required by law and to do all things necessary to effectuate such increase."

The foregoing resolutions were duly seconded and unanimously carried.

There being no further business to come before the meeting, it was, upon motion, adjourned.

(Signed) CARLTON K. HEVENER,
Secretary.

Exhibit N.

JUNE 3, 1920.

STERLING GLASS CO., INC., AND THE BOARD OF DIRECTORS THEREOF:

DEAR SIR: The undersigned have acquired all the shares of the capital stock of Sterling Glass Company, Inc., and are desirous of having Sterling Glass Company, Inc., dissolved, and in anticipation of such dissolution to have all of its property and assets as going concern assigned, transferred, and set over to Thatcher Manufacturing Company. Upon such a transfer the Thatcher Manufac-

turing Company will assume and pay all debts and obligations of Sterling Glass Company, Inc., including all of its obligations under a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part.

Therefore, the undersigned hereby request Sterling Glass Company, Inc., and its board of directors to cause to be transferred and set over to Thatcher Manufacturing Company all of the property of Sterling Glass Company, Inc., of every kind and description and wheresoever situated, including the aforesaid agreement between Francis E. Baldwin, William Ford, and Sterling Glass Company, Inc., bearing date August 28th, 1919, together with all its right, title, and interest therein, for the consideration of one dollar ($1.00) and the assumption and payment of all of the debts and obligations of Sterling Glass Company, Inc.

Furthermore, the undersigned requests the board of directors of Sterling Glass Company, Inc., to institute the proper proceedings under the laws of the State of New York for the voluntary dissolution of Sterling Glass Company, Inc., and hereby covenant and agree, as the holders of all the stock of Sterling Glass Company, Inc., to take all the necessary proceedings and to vote the said stock so as to consummate said dissolution.

Yours very truly,

THATCHER MANUFACTURING COMPANY.
By F. E. BALDWIN, *Pres.*
H. C. MANDEVILLE.
ELY W. PERSONIUS.
LEO WAXMAN.
W. P. RODGERS.

Exhibit O.

Sterling Glass Company, Inc., minutes of special meeting of stockholders.

A special meeting of the stockholders of Sterling Glass Company, Inc., was held at the office of the company, No. 521 Robinson Building, Elmira, N. Y., on the 7th day of June, 1920, at 2.00 o'clock p. m.

The meeting was called to order by Mr. Hubert C. Mandeville, who was thereupon chosen chairman of the meeting, and Mr. W. P. Rodgers was chosen secretary thereof.

There was presented and read to the meeting a waiver of notice of meeting in writing, duly signed by the owners of the entire issued and outstanding capital stock of the company, which was ordered prefixed to the minutes of this meeting.

The chairman then stated that there was present by proxies on file with the records of the company the owners of the entire issued and outstanding capital stock of the company.

The chairman then presented and read to the meeting certain preambles and resolutions duly adopted at a special meeting of the board of directors of the company, held at No. 521 Robinson Build-

ing, Elmira, N. Y., on the 7th day of June, 1920, at 11.30 o'clock a. m., as follows:

"Whereas Thatcher Manufacturing Company, a New York corporation, H. C. Mandeville, E. W. Personius, Leo Waxman, and Wm. P. Rodgers, have acquired all of the shares of the capital stock of the company and by a letter bearing date June 3d, 1920, which reads as follows:

"'JUNE 3, 1920.

"'STERLING GLASS CO., INC., AND THE BOARD OF DIRECTORS THEREOF:

"'DEAR SIRS: The undersigned have acquired all the shares of the capital stock of Sterling Glass Company, Inc., and are desirous of having Sterling Glass Company, Inc., dissolved, and in anticipation of such dissolution to have all of its property and assets as going concern assigned, transferred, and set over to Thatcher Manufacturing Company. Upon such a transfer the Thatcher Manufacturing Company will assume and pay all debts and obligations of Sterling Glass Company, Inc., including all of its obligations under a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part.

"'Therefore, the undersigned hereby request Sterling Glass Company, Inc., and its board of directors to cause to be transferred and set over to Thatcher Manufacturing Company, all of the property of Sterling Glass Company, Inc., of every kind and description and wheresoever situated, including the aforesaid agreement between Francis E. Baldwin, William Ford, and Sterling Glass Company, Inc., bearing date August 28th, 1919, together with all its right, title, and interest therein, for the consideration of one dollar ($1.00) and the assumption and payment of all of the debts and obligations of Sterling Glass Company, Inc.

"'Furthermore, the undersigned requests the board of directors of Sterling Glass Company, Inc., to institute the proper proceedings under the laws of the State of New York for the voluntary dissolution of Sterling Glass Company, Inc., and hereby covenant and agree, as the holders of all the stock of Sterling Glass Company, Inc., to take all the necessary proceedings and to vote the said stock so as to consummate said dissolution.

"'Yours very truly,

"'THATCHER MANUFACTURING COMPANY,
"'By F. E. BALDWIN, *Pres.*,
"'H. C. MANDEVILLE,
"'ELY W. PERSONIUS,
"'LEO WAXMAN,
"'W. P. RODGERS,'

"have requested Sterling Glass Company, Inc., and its board of directors to institute proper proceedings for its dissolution, and in anticipation of such dissolution to assign, transfer, and set over to Thatcher Manufacturing Company all of its property of every kind and description and wheresoever situate, as a going concern, including a certain agreement between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part, together with all

right, title, and its assumption, and payment of all the debits and obligations of this company, including the assumption of all the obligations of the Sterling Glass Company, Inc., under and pursuant to said agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part: Now, therefore, be it

"*Resolved* That the proper officers of this company be, and they hereby are, authorized, empowered, and directed, on behalf of this company and under its corporate seal to make, execute, and deliver to the said Thatcher Manufacturing Company a bill of sale of all of the property of this company of every kind and description, wheresoever situate, including a certain contract made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part, and any of the contracts and leases, and to transfer to said Thatcher Manufacturing Company, by check or draft, all cash in bank, credits or other funds, belonging to the company in the several banks and institutions in which the company may have funds on deposit, and to assign to said Thatcher Manufacturing Company all bills and accounts receivable, leases, contracts, and claims in favor of the company, and generally, to assign, and transfer to said Thatcher Manufacturing Company all property and other assets of the company of every kind and description, said transfer and assignment to be made, however, only upon the assumption by Thatcher Manufacturing Company of all of the debts and obligations of Sterling Glass Company, Inc., including the assumption of all of the obligations of the Sterling Glass Company, Inc., under and pursuant to a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second, and Sterling Glass Company, Inc., party of the third part; and be it further

"*Resolved*, That, in order to permit the said Thatcher Manufacturing Company, H. C. Mandeville, E. W. Personius, Leo Waxman, and Wm. P. Rodgers, as the holders of all of the stock of this company formally to approve of this action of its board of directors, a special meeting of the stockholders of the company be called in accordance with law and the by-laws of the company, to be held at the principal office of the Company, No. 521 Robinson Building, Elmira, N. Y., on the —— day of June, 1920, at —— o'clock m., to vote upon and ratify the foregoing resolutions."

Upon motion duly made and seconded, the following resolution was thereupon unanimously adopted:

"*Resolved*, That the foregoing resolutions, duly adopted at a special meeting of the board of directors of this company, held at No. 521 Robinson Building, Elmira, N. Y., on the 7th day of June, 1920, at 11.30 o'clock a. m., be and the same hereby are ratified, confirmed, and approved.

"There being no further business, the meeting thereupon adjourned.

"(Signed) R. P. RODGERS,
"*Secretary.*"

Exhibit P.

Know all men by these presents, that Sterling Glass Company, Inc., a corporation organized and existing under and pursuant to the laws of the State of New York for and in consideration of the sum of one dollar ($1.00) and other good and valuable considerations to it in hand paid by Thatcher Manufacturing Company, a corporation organized and existing under and pursuant to the laws of the State of New York, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, including the covenant and agreement of the said Thatcher Manufacturing Company to assume all the debts and obligations of said Sterling Glass Company, Inc., has granted, bargained, sold, assigned, and delivered, and by these presents does grant, bargain, sell, assign, and deliver unto said Thatcher Manufacturing Company all and singular the property and assets of every kind and description and wheresoever situate of the above-mentioned Sterling Glass Company, Inc., as a going concern, including a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part, together with all its right, title, and interest therein, and all other contracts and leases of Sterling Glass Company, Inc.

To have and to hold the foregoing described property unto the said Thatcher Manufacturing Company, its successors and assigns, to and for its and their proper use, benefit, and behoof, forever.

Under and by this bill of sale the Sterling Glass Company, Inc., undertakes to transfer and deliver to Thatcher Manufacturing Company all of its property and assets of every kind and description and undertakes and agrees to make, execute, and deliver to the said Thatcher Manufacturing Company such checks, bills of sale, assignments of contracts and leases, and all other documents that may be or become requisite or necessary in order to vest in the said Thatcher Manufacturing Company, its successors and assigns, legal title to said property and assets.

And the said Sterling Glass Company, Inc., its successors and assigns, the personal property and chattels which are included in the above-mentioned property, unto the said Thatcher Manufacturing Company, its successors and assigns, from and against all persons whomsoever, shall and will warrant and forever defend by these presents.

In witness whereof said Sterling Glass Company, Inc., has caused these presents to be signed by its corporate seal to be hereunto affixed this 7th day of June, A. D. 1920.

STERLING GLASS COMPANY, INC.,
(Signed) By H. C. MANDEVILLE,

Attest:

[CORPORATE SEAL.] (Signed) LEO WAXMAN,
Secretary.

Exhibit Q.

ELMIRA, N. Y., *June 3, 1920.*

A special meeting of the board of directors of Thatcher Manufacturing Company was held at the offices of the company on Thursday, June 3rd, 1920.

Present: President F. E. Baldwin and directors, H. C. Mandeville, S. G. H. Turner, R. W. Niver, Jervis Langdon, C. F. Bullard.

On motion of Mr. Langdon, Mr. Bullard was named secretary of the meeting.

The chairman submitted to the meeting a copy of a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part and Sterling Glass Co., Inc., party of the third part, and stated that the Thatcher Manufacturing Company was the owner of 2,492 shares of the capital stock of Sterling Glass Company, Inc., of the par value of $100 each, and could obtain the balance of the outstanding capital stock of said company, excepting eight shares outstanding in the name of directors, namely 2,500 shares of the par value of $100 each at par, and interest from August 29th, 1919, and further states that it was deemed advisable and for the best interests of the company, in connection with its plan to acquire all of the assets and properties of the Travis Glass Company, Essex Glass Company, Lockport Glass Company, and the entire outstanding common stock of the Woodbury Glass Company, that it acquire the balance of the outstanding stock of the Sterling Glass Company, Inc.

After due consideration the following resolution was offered by Mr. Mandeville, seconded by Mr. Turner, and unanimously adopted:

"*Resolved*, That the proper officers of the company be, and they hereby are, authorized, empowered, and directed to acquire 2,500 shares of the capital stock of the Sterling Glass Co., Inc., at par and to pay therefor the sum of $250,000 and interest from Aug. 27, 1919."

The chairman then submitted to the meeting a proposed letter to be addressed by the Thatcher Manufacturing Company, and the holders of the balance of the outstanding stock of Sterling Glass Company, Inc., to Sterling Glass Company, Inc., and the board of directors thereof, after the acquisition by it of the said 2,500 shares of the capital stock of Sterling Glass Co., Inc., as follows:

"JUNE, 1920.

"STERLING GLASS COMPANY, INC., AND THE
BOARD OF DIRECTORS THEREOF:

"DEAR SIRS: The undersigned have acquired all the shares of the capital stock of Sterling Glass Company, Inc., and are desirous of having Sterling Glass Company, Inc., dissolved, and in anticipation of such dissolution to have all of its property and assets as a going concern assigned, transferred, and set over to the Thatcher Manufacturing Company. Upon such transfer the Thatcher Manufacturing Company will assume and pay all of the debts and obligations of Sterling Glass Company, Inc., including all of its obligations under a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part.

"Therefore, the undersigned hereby request Sterling Glass Company, Inc., and its board of directors to cause to be transferred and set over to the Thatcher Manufacturing Company all of the property and assets of Sterling Glass Company, Inc., of every kind and description and wheresoever situate, including the aforesaid agreement between Francis E. Baldwin, William Ford, and Sterling Glass Company, Inc., bearing date August 28, 1919, together with its right, title, and interest therein, for the consideration of one dollar ($1.00) and the assumption and payment of the debts and obligations of Sterling Glass Company, Inc.

"Furthermore, the undersigned request the board of directors of Sterling Glass Company, Inc., to institute the proper proceedings under the laws of the State of New York for the voluntary dissolution of Sterling Glass Company, Inc., and hereby covenant and agree, as holders of all the stock of Sterling Glass Company, Inc., to take all the necessary [*proceedings*] and vote the said stock so as to consummate said dissolution.

"Yours very truly,

"THATCHER MANUFACTURING COMPANY,

"By ----------

Mr. Mandeville offered the following resolution, which was seconded by Mr. Turner and unanimously adopted:

"*Resolved*, That upon the acquisition of said outstanding capital stock of the Sterling Glass Company, Inc., the proper officers of the company be, and they hereby are, authorized, empowered, and directed to execute and deliver to Sterling Glass Company, Inc., and the board of directors thereof a letter in the form submitted to this meeting, and in the event of the acceptance thereof by the Sterling Glass Company, Inc., and the board of directors thereof, the proper officers of the company be, and they hereby are, authorized, empowered, and directed to accept on behalf of Sterling Glass Company, Inc., and to execute any and all obligations which may be necessary or proper in order to evidence the assumption by this company of all of the debts and obligations of Sterling Glass Company, Inc., including all of its obligations under a certain agreement made on the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Co., Inc., party of the third part."

Mr. Mandeville nominated Mr. Stanton Griffis as director to fill the vacancy caused by the resignation of Dr. T. L. Kane as director. The nomination was seconded by Mr. Turner. Carried.

On motion the meeting adjourned.

———— ————, *Sec'y.*

Exhibit R.

Sterling Glass Company, Inc.—Minutes of special meeting of the board of directors.

A special meeting of the board of directors of Sterling Glass Company, Inc., was held at the office of the company, No. 521 Robinson Building, Elmira, N. Y., on the 7th day of June, 1920, at 11.30 o'clock a. m.

Present: Messrs. H. C. Mandeville, E. W. Personius, and Wm. P. Rodgers, being a majority of the directors of the company and constituting a quorum thereof.

The meeting was called to order by Mr. Huber C. Mandeville, the president of the company, who presided, and Mr. E. W. Personius acted as secretary of the meeting.

There was presented and read to the meeting a waiver of notice of meeting in writing, duly signed by all the directors of the company, which was ordered prefixed to the minutes of the meeting.

Upon motion duly made and seconded, the following preambles and resolutions were unanimously adopted:

"Whereas Thatcher Manufacturing Company, a New York corporation, H. C. Mandeville, E. W. Personius, Leo Waxman, and Wm. P. Rodgers, have acquired all of the shares of the capital stock of this company and by a letter bearing date June 3d, 1920, which reads as follows:

"'JUNE 3d, 1920.

"'STERLING GLASS COMPANY, INC., AND
BOARD OF DIRECTORS THEREOF:

"'DEAR SIRS: The undersigned have acquired all the shares of the capital stock of Sterling Glass Company, Inc., and are desirous of having Sterling Glass Company, Inc., dissolved, and in anticipation of such dissolution to have all of its property and assets as going concern assigned, transferred, and set over to Thatcher Manufacturing Company. Upon such transfer the Thatcher Manufacturing Company will assume and pay all debts and obligations of Sterling Glass Company, Inc., including all of its obligations under a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, Williams Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part.

"'Therefore, the undersigned hereby request Sterling Glass Company, Inc., and its board of directors to cause to be transferred and set over to Thatcher Manufacturing Company, all of the property of Sterling Glass Company, Inc., of every kind and description and wheresoever situated, including the aforesaid agreement between Francis E. Baldwin, William Ford, and Sterling Glass Company, Inc., bearing date August 28th, 1919, together with all its right, title, and interest therein, for the consideration of one dollar ($1.00) and the assumption and payment of all of the debts and obligations of Sterling Glass Company, Inc.

"'Furthermore, the undersigned requests the board of directors of Sterling Glass Company, Inc., to institute the proper proceedings under the laws of the State of New York for the voluntary dissolution of Sterling Glass Company, Inc., and hereby covenant and agree, as the holders of all the stock of Sterling Glass Company, Inc., to take all the necessary proceedings and to vote the said stock so as to consummate said dissolution.

"'Yours very truly,

"'THATCHER MANUFACTURING COMPANY,

By F. E. BALDWIN, *Pres.*
H. C. MANDEVILLE.
ELY W. PERSONIUS.
LEO WAXMAN.
W. P. RODGERS.'

"have requested Sterling Glass Company, Inc., and its board of directors to institute proper proceedings for its dissolution, and in anticipation of such dissolution to assign, transfer, and set over to Thatcher Manufacturing Company all of its property of every kind and description and wheresoever situate, as a going concern, including a certain agreement between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part, together with all right, title, and interest therein, in consideration of one dollar ($1.00) and its assumption and payment of all the debts and obligations of this company, including the assumption of all the obligations of the Sterling Glass Company, Inc., under and pursuant to said agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part: Now, therefore, be it

"*Resolved*, That the proper officers of this company be, and they hereby are, authorized, empowered, and directed, on behalf of this company and under its corporate seal, to make, execute, and deliver to the said Thatcher Manufacturing Company a bill of sale of all of the property of this company of every kind and description, wheresoever situate, including a certain contract made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part, and any other contracts and leases, and to transfer to said Thatcher Manufacturing Company, by check or draft all cash in bank, credits, or other funds, belonging to the company in the several banks and institutions in which the company may have funds on deposit, and to assign to said Thatcher Manufacturing Company all bills and accounts receivable, leases, contracts, and claims in favor of the company, and generally, to assign and transfer to said Thatcher Manufacturing Company all property, and other assets of the company of every kind and description, said transfer and assignment to be made, however, only upon the assumption by Thatcher Manufacturing Company of all of the debts and obligations of Sterling Glass Company, Inc., including the assumption of all of the obligations of the Sterling Glass Company, Inc., under and pursuant to a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part; and be it further

"*Resolved*, That in order to permit the said Thatcher Manufacturing Company, H. C. Mandeville, E. W. Personius, Leo Waxman, and Wm. P. Rodgers, as the holders of all the stock of this company formally to approve of this action of its board of directors, a special meeting of the stockholders of the company be called in accordance with law and the by-laws of the company, to be held at the principal office of the company, No. 521 Robinson Building, Elmira, N. Y., on the —— day of June, 1920, at —— o'clock, — m., to vote upon and ratify the foregoing resolutions.

"There being no further business, the meeting thereupon adjourned.

"(Signed) ELY W. PERSONIUS,
Secretary."

Exhibit S.

JUNE 7TH, 1920.

TRAVIS GLASS COMPANY AND THE
BOARD OF DIRECTORS THEREOF:

DEAR SIR: We, the undersigned, have acquired all the shares of the capital stock of Travis Glass Company, and are desirous of having Travis Glass Company dissolved, and in anticipation of such dissolution, to have all of its property and assets as a going concern assigned, transferred, and set over to us or our nominee or nominees. Upon such transfer to us or our nominee or nominees, we will assume and pay, or cause our nominee or nominees to assume and pay, all of the debts and obligations of Travis Glass Company.

Therefore, we hereby request Travis Glass Company and its board of directors to cause to be transferred and set over to us or our nominee or nominees all of the property and assets of Travis Glass Company of every kind and description and wheresoever situate as a going concern, together with its good will, for the consideration of one dollar ($1.00) and the assumption and payment by us or our nominee or nominees of all of the debts and obligations of Travis Glass Company.

Furthermore, we request the board of directors of Travis Glass Company to institute proper proceedings under the laws of the State of West Virginia for the voluntary dissolution of Travis Glass Company, and hereby covenant and agree, as the owners of the entire issued and outstanding capital stock of the Travis Glass Company, to take all the necessary proceedings, and to vote the said stock so as to consummate the said dissolution.

Yours very truly,

H. E. TRAVIS.
P. W. ROBINSON.
F. E. BALDWIN.
F. L. COLLINS.
R. W. NIVER.

Exhibit T.

Travis Glass Company—Minutes of special meeting of the stockholders.

A special meeting of the stockholders of Travis Glass Company was held at the principal office of the company in the city of Clarksburg, West Virginia, on the 12th day of June, 1920, at 2.00 o'clock p. m.

The meeting was called to order by Mr. W. H. Mandeville, who was thereupon chosen chairman of the meeting, and Mr. P. M. Robinson was chosen secretary thereof.

There was presented and read to the meeting a waiver of notice of meeting in writing, duly signed by the owners of the entire issued and outstanding capital stock of the company, which was ordered prefixed to the minutes of this meeting.

The chairman then stated that there were present by proxy the owners of the entire issued and outstanding capital stock of the company, and the said proxies were ordered filed with the records of the company.

The chairman then presented and read to the meeting preambles and resolutions duly adopted at a special meeting of the board of directors of the company, held at 108 State Street, Elmira, N. Y., on the 12th day of June, 1920, at 11.30 o'clock a. m., as follows:

"Whereas H. E. Travis, P. W. Robinson, F. E. Baldwin, F. L. Collins, and R. W. Niver have acquired all of the shares of the capital stock of this company and by letter bearing date June 7th, 1920, which reads as follows:

"'JUNE 7TH, 1920.

"'TRAVIS GLASS COMPANY AND THE
BOARD OF DIRECTORS THEREOF:

"'DEAR SIRS: We, the undersigned, have acquired all the shares of the capital stock of Travis Glass Company and are desirous of having Travis Glass Company dissolved, and in anticipation of such dissolution to have all of its property and assets as a going concern assigned, transferred, and set over to us or our nominee or nominees. Upon such transfer to us or our nominee or nominees, we will assume and pay, or cause our nominee or nominees to assume and pay, all of the debts and obligations of Travis Glass Company.

"'Therefore, we hereby request Travis Glass Company and its board of directors to cause to be transferred and set over to us or our nominee or nominees all of the property and assets of Travis Glass Company of every kind and description and wheresoever situate as a going concern, togethere with its good will, for the consideration of one dollar ($1.00) and the assumption and payment by us or our nominee or nominees of all the debts and obligations of Travis Glass Company.

"'Furthermore, we request the board of directors of Travis Glass Company to institute proper proceedings under the laws of the State of West Virginia for the voluntary dissolution of Travis Glass Company and hereby covenant and agree, as the owners of the entire issued and outstanding capital stock of the Travis Glass Company, to take all the necessary proceedings and to vote the said stock so as to consummate the said dissolution.

"'Yours very truly,

"'H. E. TRAVIS.
"'P. W. ROBINSON.
"'F. E. BALDWIN.
"'F. L. COLLINS.
"'R. W. NIVER.'

"have requested the Travis Glass Company and its board of directors to institute proper proceedings for its dissolution and in anticipation of such dissolution to assign, transfer, and set over to them, or their nominees or nominee, all of its property of every kind and description and wheresoever situate, as a going concern, including its good will in consideration of one dollar ($1.00) and the assumption and payment by them, or their nominee or nominees, of all of the debts and obligations of this company; Now, therefore, be it

"*Resolved*, That the proper officers of this company be, and they hereby are, authorized, empowered, and directed, on behalf of this

company and under its corporate seal, to make, execute, and deliver to the said H. E. Travis, P. W. Robinson, F. E. Baldwin, F. L. Collins, and R. W. Niver, or their nominee or nominees, a bill of sale and deeds of all of the property of this company of every kind and description and wheresoever situate, including its contracts, leases, and good will, and to transfer to the said H. E. Travis, P. W. Robinson, F. E. Baldwin, F. L. Collins, and R. W. Niver, or their nominee or nominees, by check or draft, all cash in bank, credits, or other funds belonging to the company in the several banks or institutions in which the company may have funds on deposit, and to assign to said H. E. Travis, P. W. Robinson, F. E. Baldwin, F. L. Collins, and R. W. Niver, or their nominee or nominees, all bills and accounts receivable, leases, contracts, and claims in favor of the company, and generally, to assign, transfer, and convey to the said H. E. Travis, P. W. Robinson, F. E. Baldwin, F. L. Collins, and R. W. Niver, or their nominee or nominees, all of the property, good will, and other assets of the company of every kind and description: and be it further

"*Resolved*, That, in order to permit said H. E. Travis, P. W. Robinson, F. E. Baldwin, F. L. Collins, and R. W. Niver, as the owners of the entire issued and outstanding capital stock of the company, formally to approve of this action of its board of directors, a special meeting of the stockholders of the company be called in accordance with law and the by-laws of the company, to be held at the principal office of the company at Clarksburg, West Virginia, on the 12th day of June, 1920, at 2.00 o'clock p. m., to vote upon and ratify the foregoing resolutions."

Upon motion duly made and seconded, the following resolution was thereupon unanimously adopted:

"*Resolved*, That the foregoing resolutions, duly adopted at a special meeting of the board of directors of this company, held at 108 State Street, Elmira, N. Y., on the 12th day of June, 1920, at 11.30 o'clock a. m., be, and the same hereby are, ratified, confirmed, and approved."

There being no further business, the meeting thereupon adjourned.

(Signed) P. M. ROBINSON,
Secretary.

Exhibit U.

JUNE 14, 1920.

TRAVIS GLASS COMPANY AND THE
BOARD OF DIRECTORS THEREOF:

DEAR SIRS: Referring to our letter bearing date June 7th, 1920, in which we requested you to cause to be transferred and set over to us, or our nominee or nominees, all of the property and assets of Travis Glass Company of every kind and description and wheresoever situate, as a going concern, together with its good will, we hereby request that you cause said assets and property to be conveyed, transferred, and set over to Thatcher Manufacturing Company, a New York corporation, having its principal place of business at No. 108 State Street, Elmira, N. Y. Whereupon Thatcher

Manufacturing Company will assume and pay all of the debts and obligations of Travis Glass Company.

Yours very truly,

F. E. BALDWIN.
P. M. ROBINSON.
R. W. NIVER.
FRANK L. COLLINS.
H. E. TRAVIS.

Exhibit V.

Know all men by these presents, that Travis Glass Company, a corporation organized and existing under and pursuant to the laws of the State of West Virginia, for and in consideration of the sum of one dollar ($1.00) and other good and valuable considerations to it in hand paid by Thatcher Manufacturing Company, a corporation organized and existing under and pursuant to the laws of the State of New York, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, including the covenant and agreement of the said Thatcher Manufacturing Company to assume all the debts and obligations of said Travis Glass Company, has granted, bargained, sold, assigned, and delivered, and by those presents does grant, bargain, sell, assign, and deliver unto the said Thatcher Manufacturing Company all and singular the property and assets of every kind and description and wheresoever situate of the above-mentioned Travis Glass Company, as a going concern, including certain contracts and leases of Travis Glass Company.

To have and to hold the foregoing described property unto the said Thatcher Manufacturing Company, its successors and assigns, to and for its and their proper use, benefit, and behoof, forever.

Under and by this bill of said sale the Travis Glass Company, undertake to transfer and deliver to Thatcher Manufacturing Company, all of its property and assets of every kind and description, and undertakes and agrees to make, execute, and deliver to the said Thatcher Manufacturing Company, such checks, bills of sale, assignments of contracts and leases, and all other documents that may be or become requisite or necessary in order to vest in the said Thatcher Manufacturing Company, its successors and assigns, legal title to said property and assets.

And the said Travis Glass Company, its successors and assigns, the personal property and chattels which are included in the above-mentioned property, unto the said Thatcher Manufacturing Company, its successors and assigns, from and against all persons whomsoever, shall and will warrant and forever defend by these presents.

In witness whereof said Travis Glass Company has caused these presents to be signed by its proper officers thereunto duly authorized, and its corporate seal to be hereunto affixed, this 25th day of June, A. D. 1920.

TRAVIS GLASS COMPANY,
By (signed) F. E. BALDWIN,
President.

Attest:

FRANK L. COLLINS,
Secretary.

[CORPORATE SEAL.]

Exhibit W.

JULY 3, 1920.

TRAVIS GLASS COMPANY,
Clarksburg, W. Va.

DEAR SIRS: In consideration of your transfer to the undersigned, Thatcher Manufacturing Company, as nominee of F. E. Baldwin, P. M. Robinson, R. W. Niver, Frank L. Collins, and H. E. Travis, in accordance with letter of instructions of said parties to you, bearing date June 14, 1920, of all of the property and assets of the Travis Glass Company, of every kind and description and wheresoever situate, as a going concern, together with its good will, and in consideration of one dollar ($1.00) to the undersigned in hand paid, the receipt of which is hereby acknowledged, the undersigned hereby agrees to assume and pay and hereby does assume all of the debts and obligations of Travis Glass Company of every kind and description, and hereby agrees to hold you harmless in respect of said debts and obligations.

Very truly yours,

THATCHER MANUFACTURING COMPANY,
By (Signed) F. E. BALDWIN,
President.

Exhibit X.

JUNE 7, 1920.

ESSEX GLASS COMPANY AND THE
BOARD OF DIRECTORS THEREOF.

DEAR SIRS: We, the undersigned, have acquired all the shares of the capital stock of Essex Glass Company, and are desirous of having Essex Glass Company dissolved, and in anticipation of such dissolution to have all of its property and assets as a going concern assigned, transferred, and set over to us or our nominee or nominees. Upon such transfer to us or our nominee or nominees, we will assume or pay, or cause our nominee or nominees to assume and pay, all of the debts and obligations of Essex Glass Company.

Therefore, we hereby request Essex Glass Company and its board or directors to cause to be transferred and set over to us or our nominee or nominees all of the property and assets of Essex Glass Company of every kind and description and wheresoever situate, as a going concern, together with its good will, for the consideration of one dollar ($1.00) and the assumption and payment by us or our nominee or nominees, of all of the debts and obligations of Essex Glass Company.

Furthermore, we request the board of directors of Essex Glass Company to institute proper proceedings under the laws of the State of Ohio for the voluntary dissolution of Essex Glass Company, and hereby covenant and agree, as the owners of the entire issued and outstanding capital stock of the Essex Glass Company,

to take all the necessary proceedings and to vote the said stock so as to consummate the said dissolution.

Yours very truly,

R. W. LAMB.
CHAS. M. TIGNER.
WATSON PICKARD.
F. E. BALDWIN.
F. L. COLLINS.
R. W. NIVER.

Exhibit Y.

Essex Glass Company—Minutes of special meeting of the stockholders.

A special meeting of the stockholders of Essex Glass Company was held at the principal office of the company at Mount Vernon on the 11th day of June, 1920, at 3.00 o'clock p. m.

The meeting was called to order by Mr. W. H. Mandeville, who was thereupon chosen chairman of the meeting, and Mr. R. M. Lamb was chosen secretary thereof.

There was presented and read to the meeting a waiver of notice of meeting in writing, duly signed by the owners of the entire issued and outstanding capital stock of the company, which was ordered prefixed to the minutes of this meeting.

The chairman then stated that there were present by proxy the owners of the entire issued and outstanding capital stock of the company, and the said proxies were ordered filed with the records of the company.

The chairman then presented and read to the meeting preambles and resolutions duly adopted at a special meeting of the board of directors of the company, held at the principal office of the company at Mount Vernon, Ohio, on the 11th day of June, 1920, at 2.00 o'clock p. m., as follows:

"Whereas R. W. Lamb, Chas. M. Tigner, Watson Pickard, F. E. Baldwin, F. L. Collins, and R. W. Niver, have acquired all of the shares of the capital stock of this company, and by letter bearing date June 7th, 1920, which reads as follows:

"'JUNE 7th, 1920.

"'ESSEX GLASS COMPANY AND THE
BOARD OF DIRECTORS THEREOF:

"'DEAR SIRS: We, the undersigned, hace acquired all the shares of the capital stock of Essex Glass Company and are desirous of having Essex Glass Company dissolved, and in anticipation of such dissolution to have all of its property and assets as a going concern assigned, transferred, and set over to us or our nominee or nominees. Upon such transfer to us or our nominee or nominees, we will assume and pay, or cause our nominee or nominees to assume and pay, all of the debts and obligations of Essex Glass Company.

"'Therefore, we hereby request Essex Glass Company and its board of directors to cause to be transferred and set over to us or our nominee or nominees all of the property and assets of Essex

Glass Company of every kind and description and wheresoever situate as a going concern, together with its good will, for the consideration of one dollar ($1.00) and the assumption and payment by us or our nominee or nominees of all of the debts and obligations of Essex Glass Company.

"'Furthermore, we request the board of directors of Essex Glass Company to institute proper proceedings under the laws of the State of Ohio, for the voluntary dissolution of Essex Glass Company, and hereby covenant and agree, as the owners of the entire issued and outstanding capital stock of the Essex Glass Company, to take all the necessary proceedings and to vote the said stock so as to consummate the said dissolution.

"'Yours very truly,

"'R. W. LAMB.
"'CHAS. M. TIGNER.
"'WATSON PICKARD.
"'F. E. BALDWIN.
"'F. L. COLLINS.
"'R. W. NIVER.'

"have requested the Essex Glass Company and its board of directors to institute proper proceedings for its dissolution, and in anticipation of such dissolution to assign, transfer, and set over to them, or their nominee or nominees, all of its property of every kind and description and wheresoever situate, as a going concern, including its good will, in consideration of one dollar ($1.00) and the assumption and payment by them, or their nominee or nominees, of all of the debts and obligations of this company: Now, therefore, be it

"*Resolved*, That the proper officers of this company be, and they hereby are, authorized, empowered, and directed, on behalf of this company and under its corporate seal, to make, execute, and deliver to the said R. W. Lamb, Chas. M. Tigner, F. E. Baldwin, F. L. Collins, Watson Pickard, and R. W. Niver, or their nominee or nominees, a bill of sale and deeds of all of the property of this company of every kind and description and wheresoever situate, including its contracts, leases, and good will, and to transfer to the said R. W. Lamb, Chas. M. Tigner, Watson Pickard, F. E. Baldwin, F. L. Collins, and R. W. Niver, or their nominee or nominees, by check or draft, all cash in bank, credits, or other funds belonging to the company in the several banks or institutions in which the company may have funds on deposit, and to assign to said R. W. Lamb, Chas. M. Tigner, Watson Pickard, F. E. Baldwin, F. L. Collins, and R. W. Niver, or their nominee or nominees, all bills and accounts receivable, leases, contracts, and claims in favor of the company, and, generally, to assign, transfer, and convey to the said R. W. Lamb, Chas. M. Tigner, Watson Pickard, F. E. Baldwin, F. L. Collins, and R. W. Niver, or their nominee or nominees, all of the property, good will, and other assets of the company of every kind and description; and be it further

"*Resolved*, That, in order to permit said R. W. Lamb, Chas. M. Tigner, Watson Pickard, F. E. Baldwin, F. L. Collins, and R. W. Niver, as the owners of the entire issued and outstanding capital stock of the company, formally to approve of this action of its board of

directors, a special meeting of the stockholders of the company be called in accordance with law and the by-laws of the company, to be held at the principal office of the company at Mount Vernon, Ohio, on the 11th day of June, 1920, at 3.00 o'clck p. m., to vote upon and ratify the foregoing resolutions."

Upon motion duly made and seconded, the following resolution was thereupon unanimously adopted:

"*Resolved*, That the foregoing resolutions, duly adopted at a special meeting of the board of directors of this company, held at the principal office of the company, at Mount Vernon, Ohio, on the 11th day of June, 1920, at 2.00 o'clock p. m., be, and the same hereby are, ratified, confirmed and approved."

There being no further business, the meeting thereupon adjourned.

(Signed) R. M. LAMB,
Secretary.

Exhibit Z.

JUNE 16TH, 1920.

ESSEX GLASS COMPANY AND THE
BOARD OF DIRECTORS THEREOF:

DEAR SIRS: Referring to our letter bearing date June 7th, 1920, in which we requested you to cause to be transferred and set over to us, or our nominee or nominees, all of the property and assets of Essex Glass Company of every kind and description and wheresoever situate, as a going concern, together with its good will, we hereby request that you cause said assets and property to be conveyed, transferred, and set over to Thatcher Manufacturing Company, a New York corporation, having its principal place of business at No. 108 State St., Elmira, N. Y. Thereupon Thatcher Manufacturing Company will assume and pay all of the debts and obligations of Essex Glass Company.

Yours very truly,

F. E. BALDWIN.
CHAS. M. TIGNER.
R. W. NIVER.
FRANK L. COLLINS.
R. M. LAMB.
WATSON PICKARD.

Exhibit Z–1.

Know all men by these presents, that Essex Glass Company, a corporation organized and existing under and pursuant to the laws of the State of Ohio for and in consideration of the sum of one dollar ($1.00) and other good and valuable considerations to it in hand paid by Thatcher Manufacturing Company, a corporation organized and existing under and pursuant to the laws of the State of New York at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, including the covenant and agreement of the said Thatcher Manufacturing Company to assume all the debts and obligations of said Essex Glass Company,

has granted, bargained, sold, assigned, and delivered, and by these presents does grant, bargain, sell, assign and deliver unto the said Thatcher Manufacturing Company all and singular the property and assets of every kind and description and wheresoever situate of the above mentioned Essex Glass Company, as a going concern, including certain contracts and leases of Essex Glass Company.

To have and to hold the foregoing described property unto the said Thatcher Manufacturing Company, its successors and assigns, to and for its and their proper use, benefit, and behoof forever.

Under and by this bill of sale, the Essex Glass Company undertakes to transfer and deliver to Thatcher Manufacturing Company, all of its property and assets of every kind and description, and undertakes and agrees to make, execute and deliver to the said Thatcher Manufacturing Company such checks, bills of sale, assignments of contracts and leases and all other documents that may be or become requisite or necessary in order to vest in the said Thatcher Manufacturing Company, its successors and assigns, legal title to said property and assets.

And the said Essex Glass Company, its successors and assigns, the personal property and chattels which are included in the above mentioned property, unto the said Thatcher Manufacturing Company, its successors and assigns, from and against all persons whomsoever, shall and will warrant and forever defend by these presents.

In witness whereof said Essex Glass Company, has caused these presents to be signed by its proper officers thereunto duly authorized, and its corporate seal to be hereunto affixed this 17th day of June, A. D. 1920.

ESSEX GLASS COMPANY,
By F. E. BALDWIN.

Attest:
[CORPORATE SEAL.] FRANK L. COLLINS,
Secretary.

Exhibit Z–2.

JULY 3RD, 1920.

ESSEX GLASS COMPANY,
Mt. Vernon, Ohio.

DEAR SIRS: In consideration of your transfer to the undersigned, Thatcher Manufacturing Company, as nominee of F. E. Baldwin, Charles M. Tigner, R. W. Niver, Frank L. Collins, R. L. Lamb, and Watson Pickard, in accordance with letter of instructions of said parties to you, bearing date June 16, 1920, of all of the property and assets of the Essex Glass Company, of every kind and description and wheresoever situate, as a going concern, together with its good will, and in consideration of one dollar ($1.00) to the undersigned in hand paid, the receipt of which is hereby acknowledged, the undersigned hereby agrees to assume and pay and hereby does assume all of the debts and obligations of Essex Glass Company of every kind and description, and hereby agrees to hold you harmless in respect of said debts and obligations.

Very truly yours,

THATCHER MANUFACTURING COMPANY,
By F. E. BALDWIN,
President.

Exhibit Z–3.

JUNE 7TH, 1920.

LOCKPORT GLASS COMPANY AND THE BOARD OF DIRECTORS THEREOF:

DEAR SIRS: We, the undersigned have acquired all of the shares of the capital stock of Lockport Glass Company and are desirous of having Lockport Glass Company dissolved, and in anticipation of such dissolution to have all of its property and assets as a going concern assigned, transferred and set over to us or our nominee or nominees, subject to the debts and obligations of Lockport Glass Company.

Therefore, we hereby request Lockport Glass Company, and its Board of Directors to cause to be transferred and set over to us or our nominee or nominees, all of the property and assets of Lockport Glass Company of every kind and description and wheresoever situate as a going concern, together with its good will, for the consideration of one dollar ($1.00) subject to the debts and obligations of the Lockport Glass Company.

Furthermore, we request the board of directors of Lockport Glass Company to institute proper proceedings under the laws of the State of New Jersey for the voluntary dissolution of Lockport Glass Company, and hereby covenant and agree, as the owners of the entire issued and outstanding capital stock of Lockport Glass Company, to take all the necessary proceedings and to vote the said stock so as to consummate the said dissolution.

Yours very truly,

F. E. BALDWIN.
H. C. MANDEVILLE.
FRANK L. COLLINS.
R. W. NIVER.
R. P. LUCE.
R. S. KEEP.
W. E. MCCOMB.

Exhibit Z–4.

Lockport Glass Company—Minutes of special meeting of the stockholders.

A special meeting of the stockholders of Lockport Glass Company was held at the principal office of the company at 243 Washington Street, Jersey City, New Jersey, on the 24th day of June, 1920, at 12.00 o'clock m.

The meeting was called to order by Mr. W. H. Mandeville, who was thereupon chosen chairman of the meeting, and Mr. John H. Youngs was chosen secretary thereof.

There was presented and read to the meeting a waiver of notice of meeting in writing, duly signed by the owners of the entire issued and outstanding capital stock of the company, which was ordered prefixed to the minutes of this meeting.

The chairman then stated that there were present by proxy the owners of the entire issued and outstanding capital stock of the com-

pany, and the said proxies were ordered filed with the records of the company.

The chairman then presented and read to the meeting preambles and resolutions duly adopted at a special meeting of the board of directors of the company, held at 108 State Street, Elmira, N. Y., on the 24th day of June, 1920, at 11.00 o'clock a. m., as follows:

"Whereas F. E. Baldwin, H. C. Mandeville, R. W. Niver, F. L. Collins, R. P. Luce, R. S. Keep, and W. E. McComb, have acquired all of the shares of the capital stock of this company, and by letter bearing date June 7th, 1920, which reads as follows:

"'JUNE 7TH, 1920.

"'LOCKPORT GLASS COMPANY and the
BOARD OF DIRECTORS thereof.

"'DEAR SIRS: We, the undersigned, have acquired all the shares of the capital stock of the Lockport Glass Company, and are desirous of having Lockport Glass Company dissolved, and in anticipation of such dissolution to have all of its property and assets as a going concern assigned, transferred and set over to us or our nominee or nominees. Upon such transfer to us or our nominee or nominees, we will assume and pay, or cause our nominee or nominees to assume and pay, all of the debts and obligations of Lockport Glass Company.

"'Therefore, we hereby request Lockport Glass Company and its board of directors to cause to be transferred and set over to us or our nominee or nominees all of the property and assets of Lockport Glass Company of every kind and description and wheresoever situate as a going concern, together with its good will, for the consideration of one dollar ($1.00) and the assumption and payment by us or our nominee or nominees of all of the debts and obligations of Lockport Glass Company.

"'Furthermore, we request the board of directors of Lockport Glass Company to institute proper proceedings under the laws of the State of New Jersey, for the voluntary dissolution of Lockport Glass Company, and hereby covenant and agree, as the owners of the entire issued and outstanding capital stock of the Lockport Glass Company, to take all the necessary proceedings and to vote the said stock so as to consummate the said dissolution.

"'Yours very truly,

"'F. E. BALDWIN.
"'H. C. MANDEVILLE.
"'F. L. COLLINS.
"'R. W. NIVER.
"'R. P. LUCE.
"'R. S. KEEP.
"'W. E. MCCOMB.'

"have requested the Lockport Glass Company and its board of directors to institute proper proceedings for its dissolution, and in anticipation of such dissolution to assign, transfer, and set over to them, or their nominee or nominees, all of its property of every kind and description and wheresoever situate, as a going concern, including its good will, in consideration of one dollar ($1.00) and the assumption and payment by them, or their nominee or nominees, of

all of the debts and obligations of this company. Now, therefore, be it

"*Resolved*, That the proper officers of this company be, and they hereby are, authorized, empowered, and directed on behalf of this company and under its corporate seal to make, execute, and deliver to the said F. E. Baldwin, H. C. Mandeville, F. L. Collins, R. W. Niver, R. P. Luce, R. S. Keep, and W. E. McComb, or their nominee or nominees, a bill of sale and deeds of all of the property of this company of every kind and description and wheresoever situate, including its contracts, leases, and good will, and to transfer to the said F. E. Baldwin, H. C. Mandeville, F. L. Collins, R. W. Niver, R. P. Luce, R. S. Keep, and W. E. McComb or their nominee or nominees, by check or draft, all cash in bank, credits or other funds belonging to the company in the several banks or institutions in which the company may have funds on deposit, and to assign to said F. E. Baldwin, H. C. Mandeville, F. L. Collins, R. W. Niver, R. P. Luce, R. S. Keep, and W. E. McComb, or their nominee or nominees, all bills and accounts receivable, leases, contracts, and claims in favor of the company, and, generally, to assign, transfer, and convey to the said F. E. Baldwin, H. C. Mandeville, F. L. Collins, R. W. Niver, R. P. Luce, R. S. Keep, and W. E. McComb, or their nominee or nominees, all of the property, good will, and other assets of the company of every kind and description; and be it further

"*Resolved*, That, in order to permit said F. E. Baldwin, H. C. Mandeville, F. L. Collins, R. W. Niver, R. P. Luce, R. S. Keep, and W. E. McComb, as the owners of the entire issued and outstanding capital stock of the company, formally to approve of this action of its board of directors, a special meeting of the stockholders of the company be called in accordance with law and the by-laws of the company, to be held at the principal office of the company at 243 Washington Street, Jersey City, New Jersey, on the 24th day of June, 1920, at 12.00 o'clock m., to vote upon and ratify the foregoing resolutions."

Upon motion duly made and seconded, the following resolution was thereupon unanimously adopted:

"*Resolved*, That the foregoing resolutions duly adopted at a special meeting of the board of directors of this company, held at 108 State Street, Elmira, N. Y., on 24th day of June, 1920, at 11.00 o'clock a. m., be, and the same hereby are, ratified, confirmed and approved."

There being no further business, the meeting thereupon adjourned.

JOHN H. YOUNG, *Secretary*.

Exhibit Z–5.

JUNE 24TH, 1920.

LOCKPORT GLASS COMPANY and the BOARD OF DIRECTORS thereof.

DEAR SIRS: Referring to our letter bearing date June 7th, 1920, in which we requested you to cause to be transferred and set over to us, or our nominee or nominees, all of the property and assets of Lockport Glass Company of every kind and description and whereso-

ever situate, as a going concern, together with its good-will, we hereby request that you cause said assets and property to be conveyed, transferred and set over to Thatcher Manufacturing Company, a New York Corporation, having its principal place of business at No. 108 State Street, Elmira, N. Y. Thereupon Thatcher Manufacturing Company will assume and pay all of the debts and obligations of Lockport Glass Company.

Your very truly,

(Signed) F. E. BALDWIN.
H. C. MANDEVILLE.
R. W. NIVER.
FRANK L. COLLINS.
W. C. MCCOMB.
R. S. KEEP.
R. P. LUCE.

Exhibit Z–6.

Know all men by these presents that Lockport Glass Company, a corporation organized and existing under and pursuant to the laws of the State of New Jersey, for and in consideration of the sum of one dollar ($1.00) and other good and valuable consideration to it in hand paid by Thatcher Manufacturing Company, a corporation organized and existing under and pursuant to the laws of the State of New Jersey, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, including the covenant and agreement of the said Thatcher Manufacturing Company to assume all the debts and obligations of said Lockport Glass Company, has granted, bargained, sold, assigned and delivered, and by these presents does grant, bargain, sell, assign and deliver unto the said Thatcher Manufacturing Company all and singular the property and assets of every kind and description and wheresoever situate of the above mentioned Lockport Glass Company, as a going concern, including certain contracts and leases of Lockport Glass Company.

To have and to hold the foregoing described property unto the said Thatcher Manufacturing Company, its successors and assigns, to and for its and their proper use, benefit, and behoof, forever.

Under and by this bill of sale the Lockport Glass Company undertakes to transfer and deliver to Thatcher Manufacturing Company all of its property and assets of every kind and description, and undertakes and agrees to make, execute and deliver to the said Thatcher Manufacturing Company, such checks, bills of sale, assignments of contracts and leases, and all other documents that may be or become requisite or necessary in order to vest in the said Thatcher Manufacturing Company its successors and assigns, legal title to said property and assets.

And the said Lockport Glass Company, its successors and assigns, the personal property and chattels which are included in the abovementioned property, unto the said Thatcher Manufacturing Company, its successors and assigns, from and against all persons whomsoever, shall and will warrant and forever defend by these presents.

In witness whereof said Lockport Glass Company has caused these presents to be signed by its proper officers thereunto duly authorized, and its corporate seal to be hereunto affixed, this 25th day of June, A. D., 1920.

LOCKPORT GLASS COMPANY,
By F. E. BALDWIN, *President.*

Attest:
FRANK L. COLLINS, *Secretary.*
(Corporate seal.)

Exhibit Z–7.

JULY 3, 1920.

LOCKPORT GLASS COMPANY,
243 Washington Street,
Jersey City, N. J.

DEAR SIRS: In consideration of your transfer to the undersigned, Thatcher Manufacturing Company, as nominee of F. E. Baldwin, H. C. Mandeville, R. W. Niver, Frank L. Collins, W. E. McComb, R. S. Keep, and R. P. Luce, in accordance with letter of instructions of said parties to you, bearing date June 24, 1920, of all the property and assets of the Lockport Glass Company, of every kind and description and wheresoever situate, as a going concern, together with its good-will, and in consideration of one dollar ($1.00) to the undersigned in hand paid, the receipt of which is hereby acknowledged the undersigned hereby agrees to assume and pay and hereby does assume all of the debts and obligations of Lockport Glass Company of every kind and description, and hereby agrees to hold you harmless in respect of said debts and obligations.

Very truly yours,
THATCHER MANUFACTURING COMPANY,
(Signed) By F. E. BALDWIN, *President.*

Exhibit Z–8.

Thatcher Manufacturing Company,

Main office, Elmira, N. Y.

ELMIRA, N. Y., *Oct. 18, 1920.*

FEDERAL TRADE COMMISSION,
20 West 38th St.,
New York, N. Y.

GENTLEMEN: In pursuance to conversation with Frank B. Lent, Esq., your attorney and examiner, you are advised as follows:

1. Thatcher Manufacturing Company is a corporation, organized and existing under the laws of the State of New York since February, 1905. It is and has been since its organization engaged in manufacturing and selling milk bottles throughout the United States. In July, 1919, it owned and operated plants making milk bottles at Elmira, N. Y., Kane, Pa., and Streator, Ill., and it sold the product of these plants through its own sales organization. It had and now

has the exclusive right to manufacture milk bottles upon the Owens bottle machine.

2. It has purchased and now owns all the assets and assumed all the liabilities of the Travis Glass Co., a West Virginia corporation; the Essex Glass Co., an Ohio corporation; and the Lockport Glass Co., a New Jersey corporation. It has also purchased and now owns the Hartford-Fairmount license and milk-bottle machine issued to the J. T. and A. Hamilton Company; of Pittsburgh, Pa.

3. Thatcher Manufacturing Company has since its organization sold milk bottles in interstate commerce, and since its purchase of the assets of the above-named companies it has sold and now sells milk bottles in interstate commerce, including the product of the plants formerly belonging to the above-named companies, except that the J. T. and A. Hamilton Company sell milk bottles at Pittsburgh, Pa., and vicinity.

4. Each of the above-named companies before the purchase by Thatcher Manufacturing Company of the plants belonging to said companies sold milk bottles in competition with each other and in competition with Thatcher Manufacturing Company in interstate commerce.

Very truly yours,

THATCHER MANUFACTURING COMPANY,

(Sgd.) By F. E. BALDWIN, *Pres't.*

Exhibit Z–9.

(Closed issue.)

$2,000,000.

Thatcher Manufacturing Company.

Ten-year 7% convertible sinking fund mortgage gold bonds.

Dated April 1, 1920. Due April 1, 1930.

Redeemable as a whole or any part at the option of the company on any interest date on sixty days' notice at 105 and accrued interest. Interest payable April 1st and October 1st. Principal and interest payable at the office of the trustee. Coupon bonds in denominations of $1,000, $500 and $100; registerable as to principal only.

The company will agree to pay interest without deduction for any Federal income tax not in excess of 2% which it may lawfully pay at the source. Pennsylvania State tax of four mills refunded.

Stock purchase warrants: The bonds will carry detachable warrants entitling the holder to purchase common stock at $40 per share, at the rate of 25 shares of common for each $1,000 par value of bonds, at any time prior to and including April 1, 1922.

Conversion privilege: The bonds will be convertible after April 1, 1922, and until maturity into 8% cumulative preferred stock of the company, par for par, or when accompanied by warrants into common stock at $40 a share at any time after April 1, 1922, and to and including April 1, 1925, and thereafter at $50 a share, or in each case until their earlier redemption, with adjustment of interest and dividends in respect to preferred stock to date of conversion.

Guaranty Trust Company of New York, Trustee.

For further particulars concerning this issue, reference is made to the accompanying letter of Mr. Francis E. Baldwin, president of Thatcher Manufacturing Company, summarized as follows:

Business.—Thatcher Manufacturing Company, originally incorporated in 1889, has for many years been the largest manufacturer of milk bottles in the United States, and will produce about 90% of the milk bottles manufactured in the United States. The plants of the company will have a capacity for the production of over 150,000,000 milk bottles and 75,000,000 condiment and other bottles per year.

Property.—Modern manufacturing plants are located at Elmira, Lockport, and Dunkirk, New York; Streator, Illinois; Kane, Pennsylvania; Mt. Vernon, Ohio; Parkersburg, Clarksburg, and Cedar Grove, West Virginia; and Winchester, Indiana. The company will have the exclusive right to make milk bottles by both the Owens bottle machine and the Hartford-Fairmont machine, the only successful automatic bottle machines devised.

Purpose of issue.—Proceeds from the sale of these bonds will be used to complete the company's purchase of the property of Travis Glass Company, Lockport Glass Company, Essex Glass Company, the common stock of Woodbury Glass Company, and the milk-bottle business of J. T. & A. Hamilton Glass Company, and to provide additional working capital for its rapidly growing business.

Security.—These bonds are secured by a closed mortgage upon all of the property of the company and upon all of the common stock of the Woodbury Glass Company, subject only to the lien of the mortgage now outstanding for $149,500 on a portion of the property of the company which is not callable.

Assets.—Net assets at December 31, 1919, after reserve for depreciation, and not including any intangible assets such as licenses, formulæ, contracts, etc., and including the common stock of the Woodbury Glass Company, amounted to $4,463,360. This is equal to or over twice the $2,149,500 of bonds to be outstanding.

Earnings.—Net earnings available for bond interest for the year ended December 31, 1919, after reserve for depreciation, amounted to $577,351, or equal to over three and three-quarters times the annual interest charges on all bonds outstanding. On the same basis current net earnings are running at the rate of about $1,000,000 per annum. It is estimated that earnings for the year ending December 31, 1920, after deducting Federal taxes and depreciation, will amount to more than $850,000, which, after providing for bond interest and preferred dividends, is equal to more than $8.00 per share on the outstanding 80,000 shares of common stock about to be issued.

Sinking fund.—An annual sinking fund will be provided in the trust indenture for the retirement of the bonds at not exceeding 105 and accrued interest and will retire over half of this issue by maturity. For the purpose of this fund, $50,000 will be payable during the first year, $100,000 for each of the five years

thereafter and $150,000 per annum thereafter until maturity, less the principal amount of any bonds converted during the year.

Management.—The present financial plans will result in no change in management which has been in successful operation practically since the inception of the business.

All legal details concerning the validity of these bonds will be passed upon by Beekman, Menken & Griscom, for the bankers, and by Mandeville, Personius and Newman for the company. The accounts of the company have been admitted by Arthur Young & Company for the bankers and Squires & Company, certified public accountants, for the company, and valuations have been made by Coates and Burchard and the American Appraisal Company, and engineering reports by Day & Zimmerman, engineers.

The above bonds are offered when, as, and if issued and received by us, at 95 and accrued interest to yield about 7¾%.

Trust receipts of Guaranty Trust Company of New York will be issued, exchangeable for bonds, when, as, and if received from the company.

Bonbright & Company, Incorporated.

25 Nassau Street, New York.

Boston. Chicago.
Philadelphia. Detroit.
London. Paris.

The information contained herein is derived from sources which we regard as reliable, and all statements in this circular are based upon such information.

Exhibit Z–10.

THATCHER MANUFACTURING COMPANY,
ELMIRA, N. Y., *April 23, 1920.*

BONBRIGHT & COMPANY, INC.,
MESSRS. HEMPHILL, NOYES & CO.

GENTLEMEN: The following information is submitted in connection with the issue of $2,000,000 ten-year 7% convertible sinking fund mortgage gold bonds of Thatcher Manufacturing Company.

History.

Thatcher Manufacturing Company was originally incorporated in 1889, to manufacture milk-bottle caps and dairy supplies, and in 1905 began the manufacture of milk bottles, its first factory being located at Kane, Pa., with a capacity of 7,500,000 milk bottles per year. Within three years the demand for its products required the construction of a second plant at Streator, Ill., with an annual capacity of 20,000,000 bottles. Four years lated it was necessary to build a third plant at Elmira, N. Y., with a capacity of 30,000,000 bottles per year. During this period the company became the first licensee of the automatic bottle machine made by the Owens Bottle

Machine Company, and holds the exclusive rights to make milk bottles on this machine, with the right to have all improvements at any time made to this machine and the exclusive right to use any new machines at any time owned or acquired by the Owens Bottle Machine Company.

With the proceeds of this issue of bonds, the Thatcher Company will acquire the property of the Travis Glass Company, with plants located at Clarksburg and Cedar Grove, W. Va.; the property of the Essex Glass Company, with plants located at Mt. Vernon, Ohio, Parkersburg, W. Va., and Dunkirk, N. Y.; the property of the Lockport Glass Company, with plants located at Lockport, N. Y.; and the milk-bottle business and Hartford-Fairmont machine and license of J. T. & A. Hamilton Company located at Pittsburg, Pa.; and also all of the common stock of the Woodbury Glass Company, located at Winchester, Ind. Through these purchases the Thatcher Company will acquire the exclusive right to make milk bottles on the Hartford-Fairmont machines, another automatic process.

Thatcher Manufacturing Company will have the exclusive right to make milk bottles by the only successful automatic bottle machines devised and will manufacture and sell about 90% of all the milk bottles manufactured in the United States.

Capitalization.

The capitalization of the Thatcher Manufacturing Company at the completion of the present financing will be as follows:

Funded debt:		
Ten-year 7% convertible sinking fund mortgage gold bonds (this issue)	$2,000,000	$2,000,000
Underlying 6% bonds	Closed.	149,500
Capital stock:		
Preferred stock 8% cumulative	2,500,000	250,000
Common stock, no par value	130,000 shares.	80,000 shares.

All of the unissued common stock, 50,000 shares, is reserved for subscription under the stock purchase warrants, and/or for conversion of these bonds; of the unissued preferred stock, $2,000,000 is reserved for the conversion of these bonds, and the remainder available for future requirements of the company.

Purpose of issue.

The proceeds of these bonds will be used to complete the company's purchase of the property of Travis Glass Company, Lockport Glass Company, Essex Glass Company, the common stock of Woodbury Glass Company, and the milk bottle business of J. T. & A. Hamilton Company, and to provide additional working capital for its rapidly growing business.

Stock purchase warrants and conversion privileges.

The bonds will carry detachable warrants entitling the holder to purchase common stock at $40 per share at the rate of twenty-five shares of common stock for each $1,000 par value of bonds, at any

time prior to and including April 1, 1922. The bonds will be convertible upon ten days' previous notice to the company into 8% cumulative preferred stock of the company, par for par, after April 1, 1922, and until maturity or until any earlier redemption. The bonds when accompanied by warrants originally attached to such bonds, or by other warrants detacher from an equal par value amount of bonds, will be convertible upon ten days' previous notice to the company at any time after April 1, 1922, and prior to and including April 1, 1925, into common stock on the basis of par for the bonds and $40 per share for the common stock and thereafter until maturity into common stock on the basis of par for the bonds and $50 per share for the common stock, or in each case until earlier redemption of the bonds, with adjustment of interest and dividends in respect to preferred stock to date of conversion.

To protect the value of the stock purchase and conversion privileges, throughout the life of the bonds, the trust indenture will provide that so long as any of these bonds are outstanding, the corporation will not create or issue any shares of stock having preference or priority over or on a parity with the authorized preferred stock, or increase the authorized common stock without the written consent of the holders of at least a majority of the outstanding bonds.

Security.

The bonds will be secured by a closed mortgage upon all the property of the company and upon all the common stock of Woodbury Glass Company, subject to the lien of the bonds (not callable) now outstanding, amounting to $149,500 on a portion of the property of the company. The various plants thus covered by the lien of these bonds have a value as of December 31, 1919, after reserve for depreciation of $3,162,119. The value of the common stock of Woodbury Glass Company is evidenced by the fact that it will represent a cash investment by Thatcher Manufacturing Company of $600,000.

Sinking fund.

An annual sinking fund will be provided in the trust indenture for the retirement of the bonds at not exceeding 105 and accrued interest and will retire over half of this issue by maturity. For the purpose of this fund, $50,000 will be payable during the first year, $100,000 for each of the five years thereafter, and $150,000 per annum thereafter until maturity less the principal amount of any bonds converted during the year.

Sales and profits.

The following statement shows the volume of business and net profits during the three years ended December 31, 1919:

Year.	Sales.	Net earnings available for interest on bonds.
1917	$3,423,220	$330,956
1918	4,109,464	400,254
1919	4,293,843	577,351
1920 (estimated)	6,000,000	1,000,000

Net earnings available for bond interest for the year ended December 31, 1919, after reserve for depreciation amounted to $577,351, or equal to over three and three-quarters times annual interest charges on all the bonds outstanding. On the same basis, current net earnings are running at the rate of about $1,000,000 per annum. It is estimated that earnings for the year ending December 31, 1920, after deducting Federal taxes and depreciation, will amount to more than $850,000, which, after providing for bond interest and preferred dividends, is equal to more than $8.00 per share on the outstanding 80,000 shares of common stock about to be issued.

From the year 1910 until 1916, Thatcher Manufacturing Company alone showed average net earnings in excess of $163,000 per annum.

Financial condition.

The accounts of the company have been audited by Messrs. Arthur Young & Company, accountants and auditors, who have prepared the following statement of assets and liabilities as of December 31, 1919, after giving effect to the present financing, and including estimated reserve for Federal taxes.

ASSETS.

Current assets:	
Cash in bank and on hand	$354,580.04
Accounts receivable less reserve	424,970.19
Inventories	541,167.66
Liberty bonds	280,350.00
Deferred	51,792.84
Total current assets	1,652,860.73
Investments in other Companies (including Woodbury Glass Co.)	632,105.00
Real estate, plants and equipment, per appraisals of American Appraisal Company and Coates and Burchard (after reserve for depreciation)	3,162,119.94
Licenses, formulæ and contracts	1,340,351.09
	6,787,436.76

LIABILITIES.

Current liabilities:	
Notes and accounts payable	$483,643.91
Accruals and reserve, including Federal taxes	317,514.55
Total current liabilities	801,158.46
Funded debt:	
Ten-year 7% convertible sinking fund mortgage gold bonds (this issue)	2,000,000.00
6% mortgage bonds	149,500.00
Capital stock:	
Preferred stock (outstanding)	250,000.00
Common stock (80,000 shares, no par value, outstanding)	3,586,778.30
	6,787,436.76

From the above statement it will be noted that the net assets, at December 31, 1919, after reserve for depreciation, and not including any intangible assets such as license, formulæ, contracts, etc., and including the common stock of the Woodbury Glass Company,

amounted to $4,463,360. This is equal to over twice the $2,149,500 of bonds to be outstanding.

The future.

In 1905, when the Thatcher Company began the manufacture of milk bottles, the sale of these containers for the entire country did not exceed 15,000,000 per year—to-day the market takes over 150,000,000 and the demand is steadily increasing. Original customers who were buying of the Thatcher Company in one carload lots or less, are now buying fifty and seventy-five carloads and some are taking as high as 20,000,000 bottles, or about 900 cars a year. I estimate that the present consumption in bottles in the United States should double within the next five years through the development of territory which is now practically untouched, and our business should be still further enlarged by the increase in export business which has already commenced through Thatcher customers in England, France, Australia, New Zealand, South Africa, China, India, and South America.

The Thatcher Company has always sold more that 90% of its bottles direct to milk dealers. Despite the general rise in all commodities, the company has not advanced the price of milk bottles since July, 1918.

The Woodbury Glass Company: This company has been in existence for twenty-five years, and started making whiskey bottles, changing to manufacture of food containers about four years ago. It has a license under the Hartford-Fairmont patents for the manufacture of condiment bottles, including the right to make fruit jars, grape juice bottles, cider, vinegar, horse-radish and catsup bottles, and all bottles and containers used for food and food ingredients. It has also the right to make polish bottles and high pressure ware, such as bottles for carbonated drinks, ginger-ale and Coca-Cola bottles. This company is sold up on its products for many months ahead, and with the possible development of this business, I estimate that earnings of this subsidiary should be not less than $150,000 for 1920 and $250,000 for 1921.

Location of plants.

Elmira, N. Y.: Three furnaces, 6 Owens machines, of which 4 are six-arm machines and 2 ten-arm machines.

Streator, Ill.: Two furnaces, 4 Owens machines, all six-arm machines.

Kane, Pa.: Two furnaces, 4 six-arm Owens machines.

Lockport, N. Y. (two factories): One furnace each, with three Hartford-Fairmont feeders and 6 Hartford-Fairmont machines.

Dunkirk, N. Y.: One furnace with two Hartford-Fairmont feeders and four machines.

Parkersburg, W. Va.: One furnace, one Hartford-Fairmont feeder and two machines.

Mt. Vernon, O.: Two furnaces, one Hartford-Fairmont feeder, and two machines. There is another furnace working with a semi-automatic machine. It is proposed to change this to Hartford-Fairmont feeder and machines.

Clarksburg, W. Va.: Two furnaces and two Hartford-Fairmont feeders and four machines.

Cedar Grove, W. Va.: A new plant entirely, just in operation February 12. It is planned for five furnaces. It now has one furnace in operation with two Hartford-Fairmont feeders and four machines.

Winchester, Indiana (Woodbury Glass Co.): Three furnaces and six Hartford-Fairmont feeders and eighteen machines.

Total capacity.

Under present conditions the capacity of these plants is about 150,000,000 milk bottles per year. The capacity for condiment and other bottles at present is about 75,000,000 per year, and with one more furnace to be installed, will be 115,000,000 condiment bottles.

Management.

The management of Thatcher Manufacturing Company, which has been unchanged practically since its inception, will continue in control of the corporation.

Very truly yours,

FRANCIS E. BALDWIN,
President.

STATE OF NEW YORK,
County of New York, ss:

This certifies that I have this day compared the foregoing with the original signed copy and that the same is a true and correct copy thereof.

Witness my hand and seal this 13th day of April, 1922.

(sgd.) MARY G. DEVANNY.

STATE OF NEW YORK,
County of New York, ss:

Mary G. Devanny of the city of New York, State of New York, deposes and says that she has compared the foregoing with the original copy signed by Francis E. Baldwin, and that the same is a true and correct copy of said original copy.

Subscribed and sworn to before me this 13 day of April, 1922.

(sgd.) G. J. WIGHTMAN, (seal)
Notary Public, Kings County, No. 79.
Certificate file in N. Y. " No. 164.
Register's No. Kings County, No. 4073.
" " N. Y. " No. 4173.

Commission expires March 30, 1924.

ORDER APPOINTING EXAMINER.

(Dated August 14, 1922.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission.

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 14th day of August, A. D., 1922.

Present: Nelson B. Gaskill, chairman; Victor Murdock, John F. Nugent, Huston Thompson, Vernon W. Van Fleet, commissioners.

FEDERAL TRADE COMMISSION v. THATCHER MANUFACTURING COMPANY.	Docket No. 738. Order for appointment of examiner.

The above entitled proceeding being at issue and ready for the taking of testimony, it is hereby

Ordered, That W. W. Sheppard, of this commission, be and he hereby is appointed as examiner and designated to receive and hear testimony and to take evidence in the proceeding.

By order of the commission:

[SEAL.] (Signed) OTIS B. JOHNSON,
Secretary.

BEFORE THE FEDERAL TRADE COMMISSION.

FEDERAL TRADE COMMISSION v. THATCHER MANUFACTURING COMPANY.	Docket No. 738.

ELMIRA, N. Y., *August 14, 1922.*

Met pursuant to notice, 2 o'clock p. m., at Room No. 21, Hotel Langwell, Elmira, N. Y.

Before: W. W. Sheppard, Esq., examiner.

Appearances: A. R. Brindley, Esq. (Washington, D. C.), for the Federal Trade Commission; Herbert Knox Smith, Esq., Hartford, Conn., for the respondent.

Examiner SHEPPARD. We can begin now, Mr. Brindley, with the introduction of any testimony or the making of any motions that may be in order.

Mr. BRINDLEY. Mr. Examiner, it has been agreed between the chief counsel for the Federal Trade Commission and the respondent that the taking of testimony in this case might begin to-day at Elmira, N. Y., and further notice of further time has been waived by the respondent.

Examiner SHEPPARD. That is all right, Mr. Smith, is it?

Mr. SMITH. Entirely so.

Examiner SHEPPARD. All right.

Mr. BRINDLEY. A stipulation of facts in this case has heretofore been made in writing between W. H. Fuller, chief counsel for the Federal Trade Commission, and Thatcher Manufacturing Company by Herbert Knox Smith, its attorney. That stipulation agrees that

certain facts therein named may be taken as facts in this proceeding and considered by the Federal Trade Commission in lieu of testimony before the commission. Certain documents are attached to the stipulation and marked, respectively, "Exhibits A to Z–10," inclusive, and such exhibits are admitted to be true and correct copies respectively of the documents and records named in the stipulation. The stipulation may be referred to during this examination as "the stipulation" and the exhibits thereto attached may be referred to as "exhibits to the stipulation" and described by their respective numbers.

Mr. SMITH. That is quite satisfactory.

Mr. BRINDLEY. We will ask that Mr. Baldwin be sworn.

PLAINTIFF'S TESTIMONY.

FRANCIS E. BALDWIN was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Mr. BRINDLEY. Please state your name, residence, and occupation.

Answer. Francis E. Baldwin: Elmira, N. Y.: president of the Thatcher Manufacturing Co.

Question. How long have you been president of the Thatcher Manufacturing Co.?

Answer. Twenty-two years.

Question. And have you been president continuously in that time?

Answer. Yes, sir.

Question. When was the Thatcher Manufacturing Co. incorporated?

Answer. Well, there was a reorganization in January, 1900, and I was elected president at that time. It was incorporated prior to that, but there was a reorganization at that time.

Question. In what business is the Thatcher Manufacturing Co. engaged?

Answer. In the manufacture of milk bottles and milk-bottle caps.

Question. And how long has it been engaged in that business?

Answer. Well, it has been engaged in the manufacturing of milk bottles since 1906. Prior to then we were buying our bottles and selling them. We built a factory in 1905 and did not get to shipping out commercial bottles until 1906. Prior to that time we had also made and sold butter coloring and cheese coloring, but we dropped out of that.

Question. So that the manufacture of milk bottles began in 1906?

Answer. Yes, sir.

Question. And it has been engaged in manufacturing and selling milk bottles continuously since that time?

Answer. Yes, sir.

Question. And is now so engaged?

Answer. Yes, sir.

Question. What disposition is made of bottles manufactured by the Thatcher Manufacturing Co. after they are made?

Answer. They are sold by our salesmen to milk dealers and through jobbers to milk dealers.

Question. Where are your customers located?

Answer. All over the United States.

Question. What is the field of operation of the Thatcher Manufacturing Co. in the sale and distribution of milk bottles?

Answer. The entire United States, and we ship to England. We ship some to Australia—that is, not a large amount, but comparatively few—and we have shipped some to South Africa.

Question. The business in which the Thatcher Manufacturing Co. is engaged is manufacturing milk bottles and selling them and shipping them to purchasers in practically all the States and Territories of the United States?

Answer. Yes, sir; milk bottles and milk-bottle caps.

Question. When the Thatcher Manufacturing Co. began the manufacture of milk bottles, what system or plan was used?

Answer. I assume you are referring to the machine we used?

Question. Yes.

Answer. The Owens bottle machine.

Question. That was used by the Thatcher Manufacturing Co. at the beginning of its manufacture of milk bottles?

Answer. It was, yes, sir.

Question. What is that Owens bottle machine?

Answer. It is an automatic machine that gathers the metal and blows the bottle and turns it out a perfected bottle.

Question. It is, then, a machine for the manufacture of milk bottles by an entirely automatic process?

Answer. It is a machine for the manufacture of any bottle.

Question. Any bottle?

Answer. Yes, sir.

Question. Not limited to milk bottles?

Answer. No, it is used for all lines, but we have it for milk bottles.

Question. By whom is that machine made or produced?

Answer. It is made by the Owens Bottle Co., of Toledo, Ohio.

Question. Do you know what the organization of that Owens Bottle Co. is—whether it is a copartnership, association, or corporation?

Answer. A copartnership.

Question. Located, you say, at Toledo, Ohio?

Answer. Toledo is their main office.

Question. And is it the concern that sells or leases the Owens bottle machine?

Answer. Yes. They also manufacture—they have some 17 or 18 factories.

Question. And from it the Thatcher Manufacturing Co. secured the right to use the Owens machine?

Answer. Yes, sir.

Question. And how long did the Thatcher Manufacturing Co. use that machine in manufacturing milk bottles?

Answer. From 1905—we installed it—until the present time.

Question. And is your company still using them?

Answer. We are still using them, yes, sir.

Question. At the time the Thatcher Manufacturing Co. secured the right to use the Owens bottle machine were there any other automatic bottle machines on the market?

Answer. There was not.

Question. The Owens, then, was the first automatic bottle-making machine?

Answer. Yes, sir.

Question. What right did the Thatcher Manufacturing Co. secure from the Owens Bottle Co. for the use of that machine?

Answer. We arranged to secure the exclusive right to manufacture milk bottles in the United States.

Question. On that machine?

Answer. Yes, sir; on that machine.

Question. The right, then, was granted to the Thatcher Manufacturing Co. exclusively to use that machine?

Answer. Yes, sir; for milk bottles.

Question. For the manufacture of milk bottles?

Answer. Yes, sir.

Question. And no other company had the right to use it in the United States for manufacturing milk bottles?

Answer. No, sir.

Question. Until then—until the Owens bottle machine was produced, what was the method of making glass bottles?

Answer. There had come into the market a few years prior—but a few years prior—a semiautomatic machine whereby the metal was gathered by hand on a punty which took the place of the blowpipe—they gathered the metal and dropped it into a mold and then the machine finished the bottle by blowing it with compressed air and compressing it by pressure—making a ring on the neck of the bottle—the cap seat or what is commonly known as the finish of the bottle.

Question. The old original method of making glass bottles was what we called the hand process?

Answer. Yes, sir; the hand process.

Question. And subsequently there was produced the semiautomatic machine?

Answer. Yes, sir.

Question. Now, what was the Owens machine, compared with the hand process and the semiautomatic machine?

Answer. Well, the Owens machine was entirely automatic.

Question. Was it a successful machine for that purpose?

Answer. Yes, sir; a very successful machine.

Question. And at the time you secured it was it the first and only successful entirely automatic machine for making glass bottles?

Answer. At the time I secured it—we made the contract—we never made any bottles except experimentally and it was the first—the only machine that was making bottles successfully automatically.

Question. It did develop into that shortly after you acquired the use of it?

Answer. Yes, sir.

Question. Were you or not acquainted with the organization and operation of the Travis Glass Co.?

Answer. Yes, sir.

Question. Where did the Travis Glass Co. operate?

Answer. Their main office was at Clarksburg, W. Va.

Question. In what business was it engaged?

Answer. In the manufacture of milk bottles and some other bottles—water bottles, I believe.

Question. At what time?

Answer. Well, that I can not tell you just when the Travis Glass Co. was organized, but it was organized, I should say, in about 1907 or 1908. That is all guesswork.

Question. In what business was it engaged during the year 1919?

Answer. In the manufacture of milk bottles and water bottles, etc.

Question. In what field did it operate?

Answer. All over the United States.

Question. It was engaged in the manufacture, sale, and transportation of milk bottles, with purchasers in practically all the States of the Union?

Answer. Yes, sir.

Question. And during that time was it or not in competition with the Thatcher Manufacturing Co.?

Answer. It was.

Question. Were you acquainted with the organization and operation of the Essex Glass Co. during the year 1919?

Answer. Yes, sir.

Question. In what business was it engaged?

Answer. In the manufacture of milk bottles.

Question. In competition with whom?

Answer. With all manufacturers of milk bottles, including the Thatcher Manufacturing Co.

Question. And was it also in competition with the Travis Glass Co.?

Answer. Yes, sir.

Question. And what was the field of operation of the Essex Glass Co.?

Answer. I do not know whether they went to the extreme West or not—the Central West and East they covered.

Question. But it manufactured and sold bottles in many States of the United States?

Answer. Yes, sir.

Question. And shipped to purchasers in the United States?

Answer. Yes, sir.

Question. Now, during the year 1919 and prior thereto were you acquainted with the organization and operation of the Lockport Glass Co.?

Answer. Yes, sir.

Question. In what business was it engaged?

Answer. They had in 1919, and for a few years prior, been engaged in the manufacture of milk bottles.

Question. And what was its field of operation?

Answer. The Central West and the Eastern States. They did not go into the Central West much—more in the Eastern States.

Question. But they sold and shipped milk bottles to purchasers throughout many States of the United States?

Answer. Yes, sir.

Question. In competition with whom?

Answer. With all manufacturers of milk bottles, including the Thatcher Manufacturing Co.

Question. Now, during the year 1919, were you acquainted with the organization and operation of the Woodbury Glass Co.?

Answer. Yes, sir, to a certain extent.

Question. In what business was the Woodbury Glass Co. engaged?

Answer. They were engaged in the business of manufacturing what is known as condiment ware—that is, the glass container in which fruit or the extract of fruit is put, such as vinegar bottles, grape-juice bottles, ketchup, chili sauce, fruit jars, etc.

Question. Do you know the field of its operation?

Answer. Well, largely by hearsay—I should say they covered the country as well as they could.

Question. Did it ship glass bottles manufactured by it to purchasers in the various States of the United States?

Answer. Yes, sir. I am so informed.

Question. And during the year 1919 and 1920 were you acquainted with the organization of the J. T. & A. Hamilton Co.?

Answer. Yes, sir.

Question. Where was that company located?

Answer. Pittsburgh, Pa.

Question. In what business was it engaged?

Answer. In the general bottle business.

Question. Do you know whether or not the J. T. & A. Hamilton Co. manufactured and sold milk bottles?

Answer. To a limited extent.

Question. To what extent did they manufacture and sell milk bottles?

Answer. I should say—this is an estimate, of course—but I should say anywhere from twenty-five to thirty thousand gross.

Question. Did they sell milk bottles manufactured by them to customers in several States of the United States?

Answer. Well, as to several, yes. I think they sold in two or three States.

Question. They were engaged in selling milk bottles to customers in several States to a certain extent?

Answer. Yes, sir.

Question. And were they in competition with the Thatcher Manufacturing Co. and other companies?

Answer. Yes, sir.

Question. What method was used by the Travis Glass Co., the Essex Glass Co., the Lockport Glass Co., and the J. T. & A. Hamilton Co. for manufacturing milk bottles in the year 1919?

Answer. All save the Hamilton company used both the semiautomatic and the Hartford-Fairmont.

Question. Explain what you mean by the Hartford-Fairmont process?

Answer. That is the name of an automatic machine gotten out by the Hartford-Fairmont Co.

Question. Where is it located?

Answer. Hartford, Conn.

Mr. SMITH. That is the business office of it?

Answer. They are incorporated in New York.

Mr. BRINDLEY. When was the Hartford-Fairmont machine produced and put on the market?

Answer. I could not tell you.

Question. Approximate it if you can?

Answer. I should say—this is purely guesswork—in 1914–1913.

Mr. SMITH. That is a little bit early.

Examiner SHEPPARD. Refresh his memory.

Mr. SMITH. 1919 was the first license ever granted—that is, in the milk bottle business—1916.

Mr. BRINDLEY. The Hartford-Fairmont bottle machine, then, was produced subsequently to the Owens?

Answer. Yes, sir.

Question. And prior to 1919?

Answer. Yes, sir.

Question. The Hartford-Fairmont machine was also a successful automatic machine for the making of glass bottles?

Answer. Yes, sir.

Question. And it is still in use?

Answer. Yes, sir.

Question. Now, I understand you to say that the Travis Glass Co., the Essex Glass Co., the Lockport Glass Co., and the J. T. & A. Hamilton Co., in 1919, and for some time prior thereto, used the Hartford-Fairmont machine in the manufacture of milk bottles?

Answer. Well, but a short time prior thereto. I think that they did not get in operation until 1917 or 1918.

Mr. SMITH. 1917 was the first year we ever got any royalties on them.

Mr. BRINDLEY. So, in 1919, the Thatcher Manufacturing Co. was engaged in manufacturing milk bottles with the Owens bottle-blowing machine?

Answer. Yes, sir.

Question. And at that time the Travis Glass Co., Essex Glass Co., Lockport Glass Co., and the J. T. & A. Hamilton Co. were engaged in manufacturing milk bottles with the Hartford-Fairmont machine?

Answer. They were, and also with semiautomatic machines. I am not sure that the J. T. & A. Hamilton Co. were working any semiautomatics.

Question. In 1919, how many successful processes were there for the manufacture of glass bottles by semiautomatic machines?

Answer. I could not answer that question. Quite a good many.

Question. Were there any entirely automatic glass bottle-making machines in use in 1919 except the Owens machine and the Hartford-Fairmont machines?

Answer. Well, there were other machines being developed at that time, but whether they were operating at all or not, I do not know. There were the Howard, the Miller, the O'Neill, and then there was a National and the Federal. I mean the Federal instead of the National. Then they had the Graham.

Question. Were these machines you have just named automatic bottle-making machines devised and sold as a complete unit?

Answer. They used the flow process—they put up a machine and let the metal flow into the mold in taking place of the hand gathering which made it automatic.

Question. In other words, the use of two machines made an automatic process?

Answer. Well, there is not much of a machine to the Hartford-Fairmont. It is simply a spout with the metal coming down—it flows down into the molds.

Question. Is it or not a fact that in 1919 there were only two entirely successful automatic machines for manufacturing glass bottles which were made and sold or leased as a complete unit?

Answer. Well, as a complete unit, yes. That is true to-day.

Question. Now, what is true?

Answer. That they are the only two that are complete units.

Question. That is, the Owens machine and the Hartford-Fairmont?

Answer. Yes. I do not know whether I am mistaken as to that. I guess the O'Neill and the Miller do have their own machines.

Question. But that was true, at least, during the year 1919?

Answer. Yes, sir.

Question. Do you know a gentleman named I. T. Axton?

Answer. Yes, sir.

Question. Where does he live?

Answer. Louisville, Ky.

Question. When did you first become acquainted with him?

Answer. The first time I met him was in the early part of the year 1919.

Question. Did that meeting have any connection with the Thatcher Manufacturing Co. and the other companies here named?

Answer. To a certain extent, yes, sir.

Question. What was the occasion of that meeting and what transpired?

Answer. The meeting was at the Iroquois Hotel, in Buffalo, of the Lockport Glass Co.—the representatives of it—Mr. Luce, Mr. Woodward, and Mr. Keep; Mr. Travis, of the Travis Glass Co., and Mr. Axton. They went to the Iroquois Hotel. They telephoned to me and asked me to come up there and I did so. They had been discussing the merging or forming a combination of these companies that were using the Hartford-Fairmont machine and they wanted me to advance the money to buy out the Essex Glass Co. and put their property in with theirs and form a combination at once. That was the matter that was discussed that night.

Question. Do you remember in what month that meeting occurred?

Answer. No, sir; I do not. I am quite sure it was in the year 1919.

Question. Do you remember whether or not anything was said at that meeting about anyone having options on the stock of certain glass companies?

Answer. There was not anything said at that time.

Question. Did you subsequently learn anything about options on the stock?

Answer. Hold on. Excuse me. They did tell me that they had options on the stock of the Essex Glass Co. and that was what they wanted me to put up the money—to buy them out.

Question. That was the occasion of your first meeting with them?

Answer. Yes, sir.

Question. Now, what did you subsequently learn about options on the stock of certain companies?

Answer. Well, some little time afterwards Mr. Axton came to me—of course, there was considerable in between—and said that he was unable to unite these companies, as he expressed it; each one of them wanted all and they could not have all, and, therefore, that he had spent a great deal of time and money, and the thing looked as though he was out. He said, "I have a cash option on all these parties ——"

Question. What parties?

Answer. The Essex Glass Co., the Lockport Glass Co., the Travis Glass Co., and the Woodbury Glass Co., and of the milk-bottle business of the J. T. & A. Hamilton Co., and asked me if I would consider buying it. I told him I would have to think the matter out, first.

Question. Do you remember whether or not at that time he showed you his options or contract in reference to the stock of his various companies?

Answer. He did not.

Question. Did you afterward see these options or contracts?

Answer. Yes, I think I saw them afterwards, but I do not remember that I saw them, however, until the deal went through.

Question. Well, what subsequently occurred between you and Mr. Axton in reference to the stock transaction?

Answer. I told Mr. Axton that I would have to investigate and see whether it was worth the amount they asked—whether the Owens people would be willing for me to use another machine and also, another thing, that, first, whether I would get the money to pay for them, and so I started out to investigate that matter.

Question. And what subsequently transpired between you and Mr. Axton?

Answer. It subsequently transpired that Mr. Axton was employed by the Sterling Glass Co. to see if he could get these people to take a little less for their options than they had named and he succeeded in getting some reduction.

Question. Was it finally agreed between yourselves and associates that you would own the options held by Mr. Axton?

Answer. Well, whom do you mean by "my associates?"

Question. Well, yourself, Mr. Libby, Mr. Ford, and anyone eles associated with you in the transaction.

Answer. Mr. Libby and Mr. Ford and myself; yes, sir.

Question. It was agreed, then, that you would purchase the stock of these companies?

Answer. Yes, sir.

Question. And that included the stock in the Travis Glass Co., the Essex Glass Co., the Lockport Glass Co., the Woodbury Glass Co., and the milk-bottle business in the Hartford-Fairmont license and machine of the J. T. & A. Hamilton Co.?

Answer. Yes; and they wanted to know what the Thatcher Manufacturing Co. would take for its interest to go into another company.

Question. When and where was the deal for the purchase of the stock in these various companies consummated?

Answer. At the Guaranty Trust Co.

Question. In what place?

Answer. New York City, the 27th and 28th of August, 1919. One of those dates.

Question. Tell us how the transaction was completed?

Answer. Do you mean as to our getting our money, etc.?

Question. I do not care about the details of your getting the money, you know.

Answer. That was very important.

Question. It is up to you. Well, if you do not object, let me lead a little more.

Answer. Do you want me to tell about the money matter?

Question. No. Let me just ask this question: On or about August 28, 1919, you and your associates directed Mr. Axton to meet you at the office of the Guaranty Trust Co., in the city of New York, did you not?

Answer. Well, Mr. Axton was there, but the representatives of each of these companies was there with their stock.

Question. In other words, Mr. Axton was there and the representatives at least or stockholders of the other companies were also at the Guaranty Trust Co., of New York City?

Answer. Yes, sir.

Question. Now, it had been arranged by you and your associates that you would purchase the stock there—at the Guaranty Trust Co.?

Answer. Yes, sir.

Question. And you succeeded in raising the necessary funds?

Answer. Yes, sir.

Question. Now, tell us how the transaction actually occurred—so far as the purchase and transfer of the stock was concerned.

Answer. The stock was transferred in blank to the Guaranty Trust Co. and held by them as collateral security on the notes which we had discounted there on behalf of the Sterling Glass Co. and these people were paid their money and the stock passed forward to the Guaranty Trust Co. and kept by them.

Question. On the 28th day of August, 1919, did you and Edward D. Libbey and William Ford execute notes to the Guaranty Trust Co., of New York, to secure certain money?

Answer. Yes, sir; I think that is the correct date.

Question. Do you recall now the amount of the note executed by you?

Answer. $640,000 or $650,000; the note I made was $650,000.

Question. That was the note made by you, individually, as maker?

Answer. Yes, sir.

Question. Describe the notes made by the other parties at the same time.

Answer. Mr. Libbey made a note and signed it as maker for $450,000 and Mr. Ford made and signed a note as maker for $480,000.

Question. Now, yourself, Mr. Libbey, and Mr. Ford each signed a note as maker for the respective amounts you have named?

Answer. Yes, sir.

Question. And then what did each one of you do with reference to the notes made by the others?

Answer. We indorsed them.

Question. So, then, the note made by you was indorsed by Mr. Ford and Mr. Libbey?

Answer. Yes, sir.

Question. And the other two notes were treated similarly?

Answer. Yes, sir.

Question. So that the three of you were bound on all three notes?

Answer. Yes, sir.

Question. What was the total of the notes given by you three gentlemen to the Guaranty Trust Co. on that date?

Answer. $1,610,000.

Question. You have referred to the Sterling Glass Co. heretofore. That, as shown by the stipulation on file, was a corporation organized a short time prior to the 28th day of August, 1919?

Answer. Yes, sir.

Question. Do you remember how much stock the Sterling Glass Co. had issued?

Answer. $500,000.

Question. Who held that stock?

Answer. Mr. E. D. Libbey held $250,000; Mr. Mandeville held five shares——

Question. You need not go into the details of that.

Answer. Some stock was held——

Question. And the balance of it was held by whom?

Answer. By Mandeville, Waxman & Personius, and the balance by Thatcher Manufacturing Co.

Question. Practically $250,000 of the stock of the Sterling Glass Co. was held and owned by Mr. Libbey?

Answer. Absolutely, yes.

Question. And the other half by the Thatcher Manufacturing Co. and certain of its agents or employees?

Answer. Quite so.

Question. The capital stock of the Sterling Glass Co. was issued for cash, was it not?

Answer. Yes, sir.

Question. And how much money was thus raised by the sale of stock of the Sterling Glass Co. and the execution of the three notes to the Guaranty Trust Co.?

Answer. $2,110,000.

Question. And so on the 28th day of August, you and your associates in the purchase of the companies heretofore named had at your disposal how much money—August, 1919?

Answer. We had $2,110,000.

Question. Now, what disposition was made of that money that day, or the greater part of it?

Answer. We paid for the stock in the different companies named.

Question. The stock was secured from Mr. Axton and the stockholders or representatives of the stockholders?

Answer. The stock was secured from the representatives of the stockholders.

Question. On the 28th day of August, 1919, all the stock in the Travis, Essex, Lockport, and Woodbury Glass Co.'s was at New York in one of the offices of the Guaranty Trust Co., was it not?

Answer. Yes, sir.

Question. And Mr. Axton had assembled the stockholders, who had this stock with them ready for transfer, assignment, or delivery, in one of the offices of the Guaranty Trust Co.?

Answer. Yes, sir.

Question. And you and your associates met in another office of the Guaranty Trust Co.?

Answer. I think so; yes, sir.

Question. And so the money raised by the sale of the stock in the Sterling Glass Co. and on the three notes given by you and Mr. Libbey and Mr. Ford to the Guaranty Trust Co., or the larger part of that money, was used to purchase the stock in the four companies named.

Answer. Yes, sir.

Question. The amount necessary to purchase this stock was paid to the respective stockholders that day?

Answer. Yes, sir.

Question. And the stock indorsed in blank by the various stockholders?

Answer. Yes, sir.

Question. Now, what became of the stock after it was indorsed and delivered by the various stockholders in the four companies?

Answer. It was held by the Guaranty Trust Co. as collateral security for these notes.

Question. After the purchase of this stock did you and Mr. Libbey and Mr. Ford and the Sterling Glass Co. enter into a written agreement in reference to the transaction?

Answer. Yes, sir.

Question. Examine the document which I hand you and see if you can identify it. Can you identify it?

Answer. Yes, sir; Mr. Mandeville could identify it better than I could.

Question. What is it?

Answer. It is a stipulation entered into between Mr. Mandeville for the Thatcher Manufacturing Co. and Mr. W. H. Fuller, chief counsel for the Federal Trade Commission.

Question. You have examined this stipulation and the exhibits attached to it?

Answer. I have.

Question. Now, you have just stated that after the stock transaction you and Mr. Libbey and Mr. Ford and the Sterling Glass Co. entered into a written contract in reference to the transaction?

Answer. Yes, sir.

Question. And Exhibit G, attached to the stipulation you have just examined, is a copy of that contract?

Answer. Yes, sir.

Question. After the purchase of the stock in August, 1919, what disposition, if any, was made of the company whose stock was purchased?

Answer. What immediate disposition of the stock?

Question. No, sir. Of the companies themselves—in reference to their management, operation, and control?

Answer. They continued their operation under their own management.

Question. How long did that operation continue?

Answer. Until the 1st of January.

Question. What year?

Answer. 1920.

Question. And then what occurred?

Answer. Then it was largely under their own management, but it was directed—I directed it from Elmira.

Question. The direction and operation of the company, then, on the 1st of January, 1920, was brought to Elmira, N. Y.?

Answer. Yes, sir.

Examiner SHEPPARD. Have the records show what four companies these were. I have five companies here—Travis, Essex, Lockport, Woodbury, and the J. T. & A. Hamilton Co.—and the testimony shows four. Which four? Make that a little plain, for the record.

Mr. BRINDLEY. In August, 1919, what stock did you and Mr. Ford and Mr. Libbey and the Sterling Glass Co. purchase in glass-bottle manufacturing concerns?

Answer. We bought the stock of the Woodbury Glass Co., Travis Glass Co., the Lockport Glass Co., and the Essex Glass Co.

Question. The four companies?

Answer. Yes, sir.

Question. Now, at or about the same time you had a transaction concerning the J. T. & A. Hamilton Co.?

Answer. Yes, sir.

Question. There was not any stock transaction, though, so far as the Hamilton company was concerned, was there?

Answer. No, sir.

Question. What was it that was purchased from the J. T. & A. Hamilton Co.?

Answer. We purchased their license of the Hartford-Fairmont Co. and machine equipment. We also purchased the milk-bottle business—the limited amount of their milk-bottle business.

Question. The J. T. & A. Hamilton Co. was engaged, to a certain extent, in manufacturing and selling milk bottles?

Answer. Yes, sir.

Question. And they used to a certain extent the Hartford-Fairmont machine?

Answer. For that purpose, yes, sir.

Question. Now, your transaction with the J. T. & A. Hamilton Co. was that you, or the Thatcher Manufacturing Co., simply bought their milk-bottle business and their Hartford machine and license?

Answer. Yes, sir.

Question. You did not buy any stock of the Hamilton company?

Answer. No, sir.

Question. And, so far as you know, they are still in business to-day?

Answer. I know they are in business to-day, making milk bottles, among other things.

Question. But not with the Hartford-Fairmont machine?

Answer. Yes, sir, with the Hartford-Fairmont machine.

Mr. BRINDLEY. Is that clear, Mr. Examiner?

Examiner SHEPPARD. Yes. Go right ahead.

Mr. BRINDLEY. Mr. Libbey and Mr. Ford went into this transaction with you in the hope of bringing in other outside interests, I believe?

Answer. Yes, sir, with that expectation.

Question. The contract you have mentioned, which is attached to the stipulation as Exhibit G, mentioned that they might retire under certain contingencies?

Answer. Yes, sir.

Question. So, the bringing in of the other outside interests was not consummated?

Answer. It was not; no, sir.

Question. And then did Mr. Libbey and Mr. Ford give notice that they would retire from the transaction?

Answer. They did.

Question. In accordance with the contract?

Answer. Yes, sir.

Question. And in pursuance of your agreement with these gentlemen they were subsequently released from all obligations in the stock transaction?

Answer. Yes, sir. Well, they were released from their liability upon the notes and the whole transaction. Yes, sir.

Question. In accordance with the previous agreement?

Answer. Yes, sir.

Question. When the notes of yourself and Mr. Libbey and Mr. Ford were executed to the Guaranty Trust Co., you have stated, I believe, that the stock of the four companies was attached to these notes as collateral security, as described in the contract mentioned in the stipulation as Exhibit G?

Answer. They were held as collateral security. I don't know whether they were attached.

Question. They were held by the Guaranty Trust Co. as collateral security for these notes?

Answer. Yes, sir.

Question. What became of that stock subsequently?

Answer. The companies were all dissolved.

Question. Well, prior to that time, was there any change in the record title of the stock in the four companies?

Answer. I think there was. I may be mistaken, but as I remember it there was a small portion of it—some was transferred to myself and I was made president of those companies. Some was transferred, I think, to Mr. Mandeville and some of it to Mr. Collins.

Question. Do you remember the details in reference to that transfer of the stock in the four companies?

Answer. No. I do not remember the details of it. I know it was talked of and I know it was done, and that was part of the transaction of having the companies dissolved.

Question. Who knows the details of that reissue of stock and can tell us about it?

Answer. Mr. Mandeville could tell you better about that than anybody else.

Question. Was he in on all of that?

Answer. He was.

Question. Who paid the notes to the Guaranty Trust Co. on August 28, 1920, given by yourself, Mr. Libbey, and Mr. Ford?

Answer. Well, they were paid from the proceeds of the sale of the bonds.

Question. What bonds?

Answer. Bonds issued by the Thatcher Manufacturing Co.

Question. Do you know the date when that was done?

Answer. It was done in August, 1920, I should say along about the 20th; that is my memory of it. I remember giving a check for $1,635,000 and some cents—that was quite an event in my life.

Question. You, of course, can remember that feature of the transaction?

Answer. Yes, sir.

Question. Who was with you when the payment of the notes was made?

Answer. Mr. Mandeville?

Question. Where was it done?

Answer. At the Guaranty Trust Co.

Question. At New York City?

Answer. Yes, sir.

Question. What disposition was then made of the stock in the Travis, Essex, Lockport, and Woodbury Glass Cos. when you paid the notes?

Answer. I could not tell you; I do not remember.

Question. Do you remember whether or not it was delivered to either you or Mr. Mandeville?

Answer. I assume they were, but I do not remember that they were delivered to me.

Question. What became of the stock of the Travis Glass Co. ultimately?

Answer. The company was dissolved.

Question. What became of the assets of that company?

Answer. They were purchased by the Thatcher Manufacturing Co.

Question. And transferred to the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And does the Thatcher Manufacturing Co. own them to-day?

Answer. It does.

Question. Now, what disposition was made of the assets and stock of the Lockport and Essex Glass Cos.?

Answer. The Thatcher Manufacturing Co. bought the assets and the corporation was dissolved in both cases.

Question. The Travis, Essex, and Lockport Glass Cos., then, transferred and conveyed all their assets, rights, and privileges to the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And the companies were dissolved?

Answer. Yes, sir.

Examiner SHEPPARD. How about the Woodbury company?

Answer. That continued under the same organization.

Mr. BRINDLEY. The Woodbury Glass Co. is still in existence?

Answer. It is; yes, sir.

Question. And who owns the stock of that company?

Answer. The Thatcher Manufacturing Co. owns it now; that is, there is some stock held by individuals for offices. That is all.

Question. But the Thatcher Manufacturing Co. is really the owner of the stock of the Woodbury Glass Co.?

Answer. Yes, sir; the common stock. The preferred stock is held by individuals.

Question. Can you tell us, without reference to your books and records, what was the output in milk bottles of the Thatcher Manufacturing Co. for the years 1917, 1918, 1919, and 1920?

Answer. No, sir.

Question. Could you secure a statement to that effect readily from your records?

Answer. Yes, sir. A certified accountant's report; that will show that for each year.

Question. In 1919 the Thatcher Manufacturing Co. had the exclusive right to use the Owens bottle-making machine in the United States for the manufacture of milk bottles, did it not?

Answer. Yes, sir.

Question. Did the Thatcher Manufacturing Co., in addition to having the exclusive license to use the Owens bottle machine in making milk bottles in the United States, have the right to all improvements made on that machine?

Answer. It did, up to October, 1920.

Question. And also the exclusive right to use any new machines at any time owned or acquired by the Owens Bottle Machine Co.?

Answer. Yes, sir.

Question. Then, as a result of the transaction with Travis, Essex, Lockport, and the Hamilton companies, the Thatcher Manufacturing Co. also secured the exclusive right in the United States to use the Hartford-Fairmont machines in manufacturing milk bottles, did it not?

Answer. Yes, sir.

Question. And in the transaction with the Woodbury company, it secured a nonexclusive license to use the Hartford-Fairmont machines in making condiment bottles and the bottles mentioned in the Woodbury license?

Answer. Yes, sir.

Question. And the Thatcher Manufacturing Co. still owns those rights?

Answer. Yes, sir.

Examiner SHEPPARD. I have a number of questions to ask Mr. Baldwin, but if you want to cross-examine him first, you may proceed, Mr. Smith.

Mr. SMITH. I will be glad to have you do it.

Examiner SHEPPARD. Mr. Baldwin, how long did you say you have been president of the Thatcher Manufacturing Co.?

Answer. About 22 years.

Question. And that company was a coropation, wasn't it?

Answer. Yes, sir.

Question. Organized under the laws of what State?

Answer. New York State.

Question. I wish you would name the companies—I mean the officers of the Thatcher Manufacturing Company.

Answer. The main office is in New York——

Question. No. I mean the officers—president, vice president, and so on.

Answer. The president is myself——

Question. Yes?

Answer. The vice president is Mr. H. C. Mandeville; Mr. R. W. Niver is vice president, also, and general superintendent.

Question. Yes?

Answer. Mr. Casper G. Decker is secretary, and Mrs. F. H. Mills is treasurer.

Question. And were they the persons who made application for the charter for the corporation under which you are now?

Answer. Yes.

Question. They are your recent officers, are they?

Answer. Well, we reincorporated, Mr. Examiner, after we bought up this matter and issued these bonds.

Question. Well, I want to know who were your officers during this merger—during this time?

Answer. The officers prior to this were myself as president; Mr. R. W. Niver, vice president and general manager; Mr. Decker, secretary, and Mrs. F. H. Mills, treasurer. Then we—I do not remember just when—we amended our by-laws and had two vice presidents, and Mr. Mandeville was elected vice president.

Question. I see. So, from 1905 to 1919 you did business here in the city alone, without having any other offices at other places?

Answer. Well, we had branch offices.

Question. Tell us now where were they.

Answer. We had one in New York——

Question. New York City?

Answer. Yes. Chicago, Philadelphia, and Boston.

Question. Did you have any out West?

Answer. Chicago.

Question. No farther West?

Answer. No farther West; no.

Question. What was the amount for which your company was incorporated, initially?

Answer. $1,000,000 common stock and $500,000 of preferred.

Question. $1,000,000 common and $500,000 preferred; $1,500,000?

Answer. Yes.

Question. You have a plant here in Elmira, N. Y.?

Answer. Yes, sir.

Question. Now, at what other points have you plants, Mr. Baldwin, for the manufacturing of bottles?

Answer. Of the old Thatcher company we had one at Kane, Pa., which we have now abandoned, and another at Streator, Ill.; then of those we have purchased we have one at Lockport, N. Y.; one at Dunkirk, N. Y.; one at Parkersburg, W. Va.; one at Clarksburg,

W. Va.; one at Cedar Grove, W. Va., which was completed and built after we bought it; one at Mount Vernon, Ohio; one at Streator, Ill.; and then there is the Woodbury Glass Co. at Manchester, Ind.

Question. Which was taken over at the merger?

Answer. Yes, sir.

Question. Now, so you have plants now in operation at Elmira, Streator, Clarksburg, and Cedar Grove, W. Va., and Mount Vernon, Ohio, and at Lockport, N. Y., and where?

Answer. And Dunkirk, N. Y., and Parkersburg, W. Va. They are in operation now.

Question. Of those that you have mentioned, which ones have been discontinued?

Answer. Well, only one that has been formally discontinued; that is the Kane plant, but there will be a factory down if there is one furnace in it, only, for the rebuilding of the furnace.

Question. So that will be in operation again?

Answer. Yes; it hasn't been abandoned.

Question. Now, the Travis Glass Co. Where is that located?

Answer. The Travis Glass Co. had their headquarters at Clarksburg, W Va., and they had started a factory at Cedar Grove, W. Va.

Question. Was that company organized under the laws of West Virginia?

Answer. I think it was.

Question. Do you know the capital stock it was organized with?

Answer. I do not, but I think that it was $100,000.

Question. In what year, do you remember?

Answer. I do not remember the year.

Question. Now, the Essex company. Where is that located?

Answer. Their main office was at Mount Vernon, Ohio.

Question. And was that organized under the laws of Ohio?

Answer. I think it was.

Question. Do you know the capital stock at the time of organization?

Answer. No; but I think their capital stock was increased to $200,000.

Question. Now, the Lockport Glass Co.

Answer. Their headquarters were Lockport, N. Y., and they were organized under the laws of New Jersey.

Question. Do you know their capital stock at the time of incorporation?

Answer. They started several years before and started making fruit jars and miscellaneous wares, and I think their capital stock was increased. At the time we bought them out they had, I think, $200,000 of common stock and a certain amount of preferred.

Question. I want to get to that a little bit later. If you knew—if your knowledge allowed you to state the amount of stock at the time it was incorporated was what I wanted?

Answer. I could not state that.

Question. Now, the Woodbury Glass Co. is a corporation of Indiana, is it not?

Answer. Yes, sir.

Question. Under the laws of the State of Indiana?

Answer. Yes, sir.

Question. And you don't know the capital stock of that company, do you?

Answer. It was $200,000 of common stock and there is now about $100,000 of preferred.

Question. I see. Now, Mr. Baldwin, you have testified that in accordance with an agreement entered into by Mr. Axton, who represented the stockholders of the Travis Glass Co., the Essex Glass Co., the Lockport and the Woodbury companies in 1919, you and your associates took over the stock of these companies, through an arrangement with the Guaranty Trust Co., of New York city. That is correct, isn't it?

Answer. Yes, sir; that is correct.

Question. Now, I want you to tell me what was the amount of stock taken over by your company or by you and your associates from the Travis Glass Co.—the amount of stock.

Answer. Five hundred shares.

Question. That is the Travis Glass Co.?

Answer. Yes; five hundred shares of the common stock of Travis Glass Co.

Question. Any preferred?

Answer. There was no preferred stock in that company.

Question. So all you got of the Travis Glass Co. was 500 shares of the common stock?

Answer. Yes, sir.

Question. Give me the same information about the Essex Glass Co.?

Answer. One thousand shares of common stock.

Question. Any preferred stock in that company?

Answer. No preferred stock in that company.

Question. All right. Now in the Lockport company?

Answer. Twelve hundred and sixty-two shares of common stock.

Question. Any preferred?

Answer. One hundred and ten shares of preferred stock, and we also took $89,000 of par value of bonds and $117,000 of notes of the company.

Question. Now, about the Woodbury company.

Answer. There were 2,000 shares of the Woodbury company——

Question. Common stock?

Answer. Common stock. We did not purchase the preferred stock.

Question. So you only acquired the common stock in that company?

Answer. That is all.

Question. Do you still own the common stock in it?

Answer. Yes, sir.

Question. You don't own any preferred in that?

Answer. We own five shares of preferred stock in that.

Question. Now, Mr. Baldwin, I want to ask you something about the Sterling Glass Co. You and your associates petitioned the authorities of New York for the incorporation of that company?

Answer. Yes, sir.

Question. Can you tell me who were the petitioners?

Answer. The signers of it were Hubert C. Mandeville, Leo Waxman, Ely W. Personius, and William P. Rodgers.

Question. And what was the amount requested for the capital stock?

Answer. $600,000.

Question. What was the purpose of the formation of the Stirling Glass Co., as requested in the petition?

Answer. To manufacture glass and glassware of any and all kinds and description; to manufacture such machinery and appliances as are or might be useful in connection with the preparation of glassware; to produce, as opportunity offers, whatever crude materials as are necessary for the manufacture of glass; to buy such lands and erect such buildings as are needed for the purpose of carrying on the business of the corporation; to sell and dispose of the same as authorized by law; to buy, own, and sell the plants of other companies heretofore carrying on a similar business; to buy, own, hold, sell, exchange, underwrite, pledge, and deal in stocks, bonds, mortgages, trust receipts, debentures, and other securities of corporations, both domestic and foreign, engaged in a similar business; to apply for, obtain, purchase, or otherwise acquire and to register, hold, own, use, sell, or otherwise dispose of any and all trade-marks, trade names, processes, formulae, trade secrets, inventions, and devices of all kinds whether secured under Letters Patent of the United States or of any foreign country; and to repair, manufacture, buy, sell, import, export, and generally deal in and with glass and glassware and whatever crude materials as are necessary for the manufacture thereof.

Question. Quite a broad charter?

Answer. It was.

Question. Where was the Sterling Glass Manufacturing Co. to be located?

Answer. Its place of business—principal place of business—was here.

Question. Was it ever erected or did it ever function?

Answer. No, sir.

Question. It never bought any machinery or established any physical plant?

Answer. Except as it bought these plants—the stock in these plants.

Question. The Sterling Glass Co. never functioned, then, as a real manufacturing plant, did it?

Answer. No, sir.

Question. How long was it in existence?

Answer. I think all these companies were dissolved along about in June, 1920, or July. The records here show when they were dissolved.

Question. I want the date of the incorporation of the Sterling Glass Co., if you can give it to me from memory.

Answer. It should be right here in the stipulation. The application was sent the 23d day of August, 1919.

Question. And that was a week or so before the taking over of these three other companies?

Answer. Yes, sir.

Question. Mr. Baldwin, I want to have you tell me what connection, if any, Mr. Axton had with the Travis, Essex, Lockport, or Woodbury companies.

Answer. He was president of the Woodbury company and was seeking to merge all these companies together.

Question. He obtained the options on the stock of the Travis, Essex, Lockport, and Woodbury companies before he came to you with the proposition, did he?

Answer. That was obtained. He didn't come to me first with the proposition. The Lockport Glass Co.—that is, the members of that company—telephoned me and they wanted to buy out the Essex Glass Co. and buy out the J. T. & A. Hamilton Co.

Question. That was the Lockport company?

Answer. Yes. That is, they wanted to do that and go on with this merger between themselves and Travis and they wanted me to put up $710,000. I declined to do it.

Question. Well, then, Mr. Axton fell down on his original proposition and then met you?

Answer. They worked after I declined to do that, they worked it, trying to finance their proposition and they could not get together. Finally he came to see me several times, and one time he came and wanted me to take $500,000 of second preferred stock. Again I declined. Finally he came to me and told me that the whole thing had fallen down and he was out his time and money he had put into it and wanted to know if I would consider buying it. I did not know at that time that they had a cash option on anything but the Essex and the J. T. & A. Hamilton business and I then took the matter up. Mr. Libbey thought there was an opportunity to get together a big proposition and form a big company and have that company take over the Thatcher Manufacturing Co. That was the original plan.

Question. Who is this Mr. Libbey?

Answer. He is president of the Owens Bottle Co.; president of the Libbey-Owens Sheet Glass Co.; he is president of the Libbey Cut Glass Co. and the Libbey Cut Glass Co. of Toledo. He is a man of large means.

Question. So, he is president of the company from which your company obtains its machines?

Answer. Yes, sir.

Question. Your company—the Thatcher Manufacturing Co.—has for some years past, before the merger or the taking over of the Travis, Essex, Lockport, and Woodbury companies, done a considerable business in the sale of milk bottles in interstate commerce—all over the United States, haven't you?

Answer. Yes, sir.

Question. Do you know what percentage of the bottle business was done by your company—I mean the total output—I mean the total, Mr. Baldwin, of the whole bottle business in the United States. What part of it was your company doing prior to the merger?

Mr. SMITH. You mean milk bottles?

Examiner SHEPPARD. Sure. Milk bottles, entirely. If you know that I would like to get it.

Answer. I do not know because I do not know just what the others did, but I think it is safe to say we were doing from 40 to 45 per cent.

Question. That was up to August, 1919?

Answer. Yes, sir.

Question. Now, after you and your associates, through the business deal we have just spoken of, acquired the other four companies here that have been mentioned—Travis, Essex, Lockport, and Woodbury——

Answer. Well, the Woodbury, of course, had nothing to do with milk bottles.

Question. That is right. The question should read Travis, Essex, and Lockport. Of course, the acquisition of these three companies greatly increased your output and your sales?

Answer. It did increase it, yes, sir; after while.

Question. Now, what percentage of the total milk-bottle business in the United States in 1920 was done by your concern, including the business of the merger?

Answer. I could not say as to how much, but I think I am safe in saying that it was probably about 70 per cent.

Question. Seventy per cent?

Answer. I should think so. We kept our factories running better than our competitors did.

Question. Do you make sales of your milk bottles through traveling salesmen?

Answer. Yes, sir.

Question. And do they travel from your branch offices or do they get their directions from your home office at Elmira?

Answer. They get all their directions from the home office at Elmira. There are some that travel out from branch offices, but they mostly get their directions from the home office at Elmira.

Question. Do you ship bottles to your various plants throughout the country?

Answer. Yes, sir.

Question. Now, the taking over of the three companies—the Travis, Essex, Lockport—and the Woodbury companies, that was included in this merger?

Answer. Yes; it was included in the purchase. It was not really a merger.

Question. That was financed by the $50,000 that was acquired from the Stirling Glass Co. and the hypothecated stock of the various companies?

Answer. As security for the notes we gave.

Question. As security for the $1,600,000?

Answer. $1,610,000.

Question. How long a time was the note given by you and Messrs. Libby and Ford to run—what was the duration of the notes?

Answer. The note was drawn upon demand, but the Guaranty Trust Co. agreed to carry it for a year.

Question. And you took up the note by the issuing of bonds, as you have stated?

Answer. Yes, sir.

Question. You have a great number of stockholders in the Thatcher Manufacturing Co.?

Answer. Quite a good many; yes, sir.

Question. What is your stock worth on the market now?

Answer. Well, we have issued a "no-par" common stock and the preferred stock is $100 a share. Owing to the fact that the people have a right to transfer their bonds that they have into common

stock, it practically puts our common stock at $40, although it is only paying $2 a year dividends.

Question. When was your last dividend paid?

Answer. In the middle of July.

Question. And what were they?

Answer. Fifty cents a share.

Question. Is that the last dividend that you have paid?

Answer. Well, we paid——

Question. You pay twice a year or quarterly?

Answer. We pay quarterly. We paid a dividend on the preferred stock on the 1st of June and on the 1st of September—quarterly on the preferred and quarterly on the common. The common was paid the 15th of July and the next quarter will come on the 15th of October.

Question. Is your preferred stock and common stock on the same basis of $100?

Answer. No. The common stock has no par value.

Question. I see. The preferred stock is $100 and the common stock with no special value.

Answer. No par value.

Question. Is your stock quoted on the exchange?

Answer. No, sir.

Question. What is the present price of your product by the gross?

Answer. Milk bottles, quart, by carloads, in single carloads, milk quart bottles are sold at $8.25 a gross, delivered, freight allowed to destination. On larger quantities, such as 10 carloads, 25, 50, and 100, will bring a less price.

Question. In other words, in a great quantity you sell at less?

Answer. Yes.

Question. Now, has there been any material decrease or increase in the price of milk bottles since the taking over by you and your associates of the companies mentioned here?

Answer. Yes, there was an increase. I think the gentleman that represented your commission here found by examination of the books and records that the average increase in cost of material, labor, and freight was 350 per cent. We increased the price of bottles about 100 per cent.

Question. What year was that?

Answer. That was during the year 1920 and 1921. No, 1920.

Question. Let me understand you, Mr. Baldwin. Do you mean to tell me that after the acquiring of the additional companies here by you and your associates that the price of milk bottles went up 100 per cent?

Answer. Yes, sir, and the price of coal went from $3 to $13 a ton f. o. b. at the mines, and the price of freight another 100 per cent.

Question. In other words, changed conditions in the industrial field is what you attribute the necessity for the raising of prices to?

Answer. We did not raise near as much as the price of material or freight. The average increase, I think, was 350 per cent and our average increase was 100 per cent. By getting these companies in we cut down our sales expense and cut down our administration expense, and we sold at a very close margin.

Question. I was going to ask you about the benefits. I would be glad if you would state for the record, in your own words, the mate-

rial advantage that the Thatcher Manufacturing Co. experienced from the acquisition by it of the Travis, Essex, and Lockport companies, in just a few words.

Answer. Why, we were able, by the acquisition of the companies in increasing our sales, to cut out the administration expense of all of them, and to reduce our sales expense. Our average sales expense is less than 2 per cent of the gross. It runs about from 1.5 to 1.56 up to 1.76.

Question. That is for the conducting of your sales operations?

Answer. That is the salesmen's salaries and other expenses.

Question. Two per cent of your business?

Answer. Less than 2 per cent. For example, Mr. Travis was drawing a salary of $20,000 a year as president of his company——

Question. That was eliminated, of course?

Answer. That was eliminated entirely.

Question. And the same may be said of the officers of the Essex and Lockport companies?

Answer. Yes; and the Woodbury company.

Question. So, generally speaking, the acquisition of the Travis and the Essex, and Lockport companies enabled you and your associates to materially decrease the expenses of operation all around, didn't it?

Answer. It did; yes, sir. Not only that, we increase the output in their factories by cutting out the fighting that they had with their men and getting them in harmony and teamwork. Now, the price of soda ash, that they were paying for soda ash, was 55 cents a hundred. It went up to $2 a hundred that we had to pay for soda ash.

Question. That was following and during the war period?

Answer. Soda ash is the most expensive thing that goes into milk bottles or any other glass bottles. A cent a hundred on soda ash means a cent a gross on milk bottles. Now, the price of sand went up to 350 per cent above what it was. The price of lumber went up to about 350 per cent and is still away up. The price of lime—lime we used to get at $2.24. That went up to $13 a ton.

Question. That increase you made during the war period, did that continue?

Answer. No. We made a 50-cent-a-gross reduction on the 1st day of May, 1921.

Question. About a year ago?

Answer. Yes, sir.

Question. And has that scale of prices—does that scale of prices still hold?

Answer. No, sir. There have been three other reductions since. We have reduced the price of milk bottles three times 50 cents a gross and one time 50 cents a gross on quarts, 75 on pints, and $1 a gross on half pints, and we didn't have a competitor that did not kick like a steer and say we were fools.

Question. Now, Mr. Baldwin, I want to ask you if you know, and I presume you are familiar with the names of your competitors throughout the country?

Answer. Yes, sir; largely.

Question. Name as many of them as you can, one by one.

Answer. That were in business prior to our buying the assets of these companies: There was the Winslow Glass Co. of Columbus, Ohio; the Liberty Glass Co., of Sapulpa, Okla.; the Buck Glass Co. ——

Question. Where is that?

Answer. They are at Baltimore.

Question. All right. Next?

Answer. That is all that were in business.

Question. Prior to the taking over?

Answer. Prior to the taking over. No. The Atlantic Bottle Co.

Question. Where are they located?

Answer. They weren't in operation making milk bottles at that time. The Atlantic Bottle Co.'s office is in New York City, but their factory is at Tarentum, just outside of Pittsburgh.

Question. Now, did the Winslow Glass Co. make milk bottles entirely?

Answer. Yes, sir.

Question. Is it a large or big concern? How does it compare with the Thatcher Manufacturing Co. in size, capital stock, and output?

Answer. I do not know what their size is. It is practically owned by Palmer Winslow and his family. They have two furnaces, but since we have bought out these plants there have come in the Burney-Bond Co. and the F. E. Reed Glass Co., of Rochester, N. Y.; the Lamb Glass Co., of Mount Vernon, Ohio; a factory at Alexandria, Va., Diamond, I think his name is; another at Richmond, Va.; another at Norfolk, Va.; another is being constructed that we think will be making bottles in October at Jacksonville; another at Chattanooga, Tenn., making milk bottles, and another down in Virginia—I can not just think of his name now—that are taking orders for milk bottles, and another out on the Pacific coast. There were two factories out there making milk bottles prior to the taking over and now there are four.

Question. You don't know their names?

Answer. No; I do not.

Question. You are in competition with them?

Answer. One is the Pacific Coast Glass Co. and the other is the Illinois-Pacific Glass Co. Then there is another down at Los Angeles and one up at Seattle, and then there is another factory started to make milk bottles in Michigan. The Burney-Bond have built a new factory—a new furnace; the Lamb Glass Co. is building a new factory and new furnace. They are using these full automatic machines. And so is the Winslow—they have turned over into a full automatic machine.

Question. How many furnaces does the Thatcher Manufacturing Co. have?

Answer. We have three here in Elmira, two in Streator, one in Lockport, one at Dunkirk, one at Parkersburg, one at Clarksburg, one at Cedar Grove, one at Mount Vernon for milk bottles, and we have three furnaces at the Woodbury Glass Co. They are not engaged in manufacturing milk bottles.

Question. That makes 11 in all?

Answer. Yes, sir.

Question. Does that take in the furnaces in connection with the Travis, Essex, and Lockport?

Answer. Yes, sir.

Question. So your company has in all 11 furnaces?

Answer. Yes, sir.

Question. Of course, the acquisition by you and your associates of the stock of the Travis, Essex, Lockport, and Woodbury companies carried with it the assets and the physical properties of these companies?

Answer. Yes, sir; that was all owned by the Sterling Glass Co. and Libbey, Ford, and myself. When they got through they dropped the whole load on my shoulders, and I sweat.

Question. So Mr. Libbey and Mr. Ford and yourself were the acquirers of these properties, weren't you?

Answer. Yes, sir.

Question. And when Libbey and Ford relinquished, you took over?

Answer. I had to.

Question. Was that done personally or as a representative of the Thatcher Manufacturing Co.?

Answer. Personally.

Question. And you were the sole owner, then, of the stock of the entire three companies?

Answer. I was; yes, sir.

Question. Are they run now or are they operated now by you individually or are they owned by the Thatcher Manufacturing Co.?

Answer. The Thatcher Manufacturing Co., along in June, I see by these records, not at the time of the paying of that note, had these companies dissolved and took over the assets of these different companies.

Question. What became of the stock in this case of these companies?

Answer. Well, the companies were dissolved afterwards.

Question. You did own, personally, after Libbey and Ford got out, the stock of the three companies acquired—Travis, Essex, and Lockport?

Answer. Yes, sir.

Question. Now, did they get out subsequent or prior to the issue of the bonds?

Answer. Prior—a long time prior; yes, sir.

Question. Then, who issued the bonds?

Answer. Then when Mr. Mandeville found he could finance this matter, for it was a very hard time to finance matters in 1920, when Mr. Mandeville after working night and day, and I thought he did a wonderful piece of business, we found that we could get through and save my neck, then we said to the Thatcher Manufacturing Co., "We will turn these assets over to you and we will run this business together, if you will put the Thatcher Manufacturing Co. into the pot to sweeten it up."

Question. That is what I want to know about. I want to know exactly about the converting of the stock which carried with it the assets—the physical properties, of the Travis company, the Essex company, the Lockport company, from you, individually, to the Thatcher Manufacturing Co.

Answer. The stock was never transferred. They simply bought the assets before the companies were dissolved. Then the companies were dissolved.

Question. You gentlemen then simply said, "There is no stock to these companies; we will just wipe the stock out and let the assets and physical properties be merged with the Thatcher Manufacturing Co." Is that what you said, virtually?

Answer. Virtually we said we would buy the stock and assets of this company and then dissolve the company and wipe the company out, yes, sir.

Question. And you were the sole owner?

Answer. Surely.

Question. And when the Thatcher Manufacturing Co. then took over for purposes of management, etc., the three companies, it virtually took over the stock which carried with it the assets and the physical properties of the three companies?

Answer. I do not think so; no, sir.

Question. Could you simply wipe out an existing issue of stock that you had purchased and say, "This stock does not exist; I will transfer simply the assets of these companies and the physical properties of that company to the Thatcher Manufacturing Co.?"

Answer. These individual corporations transferred their assets, as they had a perfectly legal right to do, and after their assets were transferred then the company or companies were dissolved.

Question. Was there a deed of transfer of the properties of the three companies to the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. Is that an exhibit in this case?

Answer. Yes, sir. That is Exhibit Z 6. Z 1, I think, is the first one.

Question. That transfer, Mr. Baldwin, you recognize as Exhibit Z–1 to the stipulation?

Answer. Yes, sir.

Question. And this paper, do you remember the date?

Answer. June 17, 1920.

Question. That was a little less than a year from your transaction with the Guaranty Trust Co.?

Answer. Yes, sir.

Question. Now, as president of the Thatcher Manufacturing Co., you, Mr. Baldwin, have given an account of your stewardship at least once a year, didn't you?

Answer. Yes, sir.

Question. Do you remember your report as president of the Thatcher Manufacturing Co. in February, 1920, the year following the acquisition of the companies mentioned in this proceeding?

Answer. Yes, sir.

Question. On page 3 of your report you use this language—about the middle of the page you will find it: "After several months of negotiations with the Owens Bottle Machinery Co. and obtaining their consent and advice that we purchase these companies and thereby obtain the rights to the Hartford-Fairmont feeders, upon the 29th day of August we purchased the capital stock of the companies named and the Hartford-Fairmont feeder and machines and milk

bottle business of the J. T. & A. Hamilton Co." That was a correct statement?

Answer. You have used my language.

Question. Now, the word "we" there refers to——

Answer. It refers to the Sterling Glass Co., but I might say it was rather carelessly worded. In December Mr. Libbey and Mr. Ford had notified me that they were through and left this $1,610,000 note on my shoulders.

Question. That was in December?

Answer. In December.

Question. 19——

Answer. 1919. Mr. Mandeville at once got busy on trying to finance this matter and had got it down where he said he could finance it; the only question was in regard to the amount we would have to pay. Then I thought if we could I would have the Thatcher Manufacturing Co., maybe they would take it over.

Question. As a matter of fact, didn't the Sterling Glass Co. cease to exist very shortly after it was organized?

Answer. I do not remember when it was dissolved, but it was not dissolved until along in September—September 9, 1920.

Question. There is a reference here, "We purchased." You mean the Sterling Glass Co. took over the three?

Answer. Yes, sir. Mr. Libbey's relation to me personally has been very close, very friendly, indeed, and he used the expression in our conversation to Mr. Mandeville and myself, that I would be at the head of a company larger than the Owens Bottle Co. At that time we expected to buy out the Hartford-Fairmont Co.

Question. But that fell through?

Answer. That fell through, yes.

Question. Well, as a matter of fact, the title to the Travis, Essex, and Lockport companies was never in the Sterling Glass Co., was it?

Answer. No, sir.

Question. So that your statement here to "we" was unfortunate?

Answer. Yes, sir.

Question. The facts are, as I understand it, that you and Libbey and Ford took over—acquired by actual purchase—one-half of the money being raised from the Sterling Glass Co.?

Answer. Not half of it.

Question. Well, 500,000?

Answer. Yes, less than a quarter.

Question. You three gentlemen took over these three properties—the stock of these three concerns—and then subsequently, for reasons known to yourselves mostly, Libbey and Ford dropped out?

Answer. Yes, sir.

Question. Leaving you as sole owner of the business?

Answer. Yes, and leaving the note for me to pay.

Question. And subsequently the whole thing was taken over by Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. You say the assets and the physical properties?

Answer. Yes, sir.

Examiner SHEPPARD. I think that will be all for the time being, Mr. Smith.

Mr. BRIXDLEY. Mr. Baldwin, regardless of any conclusions that any of us may hold, the fact remains that the stock of the Travis, the Essex, the Lockport, and the Woodbury Glass Cos. was acquired from the stockholders of these respective companies in the office of the Guaranty Trust Co. at New York on the 28th day of August, 1919, was it not?

Answer. Yes, sir.

Question. And that stock was paid for by the proceeds of the three notes made and indorsed by you, Ford, and Libbey, together with the $500,000 subscribed in cash to the capital stock of the Stirling Glass Co.?

Answer. Yes, sir.

Question. That is true, isn't it?

Answer. Yes, sir.

Question. Now, the stock of the four companies, after having been indorsed in blank by the stockholders of the four companies, was deposited with the Guaranty Trust Co. as collateral security for the three notes given by yourself, Ford, and Libbey?

Answer. Yes, sir.

Question. Now, immediately following that, the contract which is shown in the stipulation as Exhibit G was executed by you, Ford, and Libbey and the Sterling Glass Co.?

Answer. Yes, sir.

Question. Now, as stated heretofore, the contract of August 28, 1919, of which Exhibit G to the stipulation is a copy, gave authority or an option to Ford and Libbey to retire from the transaction under conditions named?

Answer. Yes, sir.

Question. Now, examine, if you please, Exhibits I and J of the stipulation and see if you can identify them?

Answer. Yes, sir.

Question. What is Exhibit I?

Answer. It is a letter written to me by William Ford under date of December 11, 1919, notifying me that he wishes to withdraw.

Question. Now, you received that from Mr. Ford; the original, at least?

Answer. Yes, sir.

Question. Now, examine Exhibit J and tell us what that is?

Answer. A similar letter from E. D. Libbey, dated December 11, 1919.

Question. Notifying you that he also desired to retire?

Answer. Yes. They were both given from the same office.

Question. Now, Exhibits I and J by Mr. Ford and Mr. Libbey mentioned the contract of August 28, 1919?

Answer. Yes, sir.

Question. Which we have heretofore referred to?

Answer. Yes, sir.

Question. Therefore, you were then advised that Mr. Ford desired to retire from this transaction in reference to the purchase of stock in the four companies named?

Answer. Yes, sir.

Question. Now, the agreement with Mr. Libbey provided that if he desired he would be repaid for the $250,000 subscribed to the capital stock of the Sterling company, did it not?

Answer. Yes, I think it did.

Question. Was he repaid that money?

Answer. He was.

Question. By whom?

Answer. Out of the sale of the bonds.

Question. What bonds?

Answer. When we paid up these notes, the $2,000,000 bond issue.

Question. Of the Thatcher Manufacturing Co.?

Answer. Of the Thatcher Manufacturing Co., which covered all these properties—the Woodbury plant, Travis, Lockport, and the Essex glass plants.

Question. Was not Mr. Libbey paid $250,000 for his stock in the Sterling Glass Co. with some interest added by the Thatcher Manufacturing Co.?

Answer. I think the check was drawn by the Thatcher Manufacturing Co., but it was out of that money.

Question. It was not, then, from the sale of additional stock of the Thatcher Manufacturing Co.?

Answer. The Thatcher Manufacturing Co. did sell additional stock about that time.

Question. At about that time?

Answer. At about that time.

Question. So that Thatcher Manufacturing Co. paid Mr. Libbey for his stock in the Sterling company?

Answer. The Thatcher Manufacturing Co. gave him the check; yes, sir.

Question. Then the Thatcher Manufacturing Co. became the owner of all of the stock in the Sterling Co.?

Answer. Yes. That was done in September, 1920.

Question. So that Thatcher Manufacturing Co. actually then owned all the stock in the Sterling company except a few shares issued to officers or agents of the Thatcher Manufacturing Co. for the purpose of qualifying officers and directors?

Answer. Yes, sir.

Question. You have stated heretofore that prior to this stock acquisition in August, 1919, the Travis Glass Co., the Lockport Glass Co., and the Essex Glass Co. were engaged in manufacturing and selling milk bottles in various States of the United States?

Answer. Yes, sir.

Question. And they were so selling milk bottles in competition with the Thatcher Manufacturing Co.?

Answer. Yes, sir; they were.

Question. And in competition with each other?

Answer. Yes, sir.

Question. Now, that was the situation existing on the 28th day of August, 1919?

Answer. Yes, sir.

Question. Now, after the acquisition of the stock in August, 1919, was competition between the Thatcher Manufacturing Co. and the

Essex, Travis, and Lockport companies continued or did it cease to exist?

Answer. At that time the contracts were practically all taken. They had their contracts and they went on and carried on the business in their own name and under their own organization up until the 1st of January.

Question. Of what year?

Answer. 1920.

Question. Then the 1st of January, 1920, the management and control of the Travis, Essex, and Lockport companies was brought to Elmira, N. Y.?

Answer. Yes, sir; under my control.

Question. And managed from your office or the office of the Thatcher Manufacturing Co.?

Answer. It was managed from our office. I managed it; the books were kept separately from other books.

Question. And separate bookkeeping systems, but all organized, operated, and directed form the same source?

Answer. Yes.

Question. And by the same organization?

Answer. Yes, sir. I directed it and we carried it out.

Question. At the time of the stock acquisition in August, 1919, the stock in the four companies was in the name of certain stockholders who assigned the stock on the day of the purchase in New York, was it not?

Answer. They delivered it at that time; they signed it before.

Question. There was no change in the book ownership or record ownership of the stock at that time, was there?

Answer. No, sir.

Question. The stock or certificates of stock were held in the office of the Guaranty Trust Co. at New York?

Answer. Yes, sir.

Question. Now, do you remember that subsequent to your purchase of the certificates of stock of the four companies the certificates were sent to Elmira, N. Y.?

Answer. Yes, sir, they were, and certain stock was issued so that we could have control of the officers of these companies. I was president of these companies.

Question. The stock of these four companies was sent by the Guaranty Trust Co. to a bank in Elmira, N. Y. Is that true?

Answer. I presume it is true.

Question. At any rate, then, in the latter part of 1919 the stock in the Travis, Essex, Lockport, and Woodbury companies was reissued to these officers, agents, and employees or stockholders of the Thatcher Manufacturing Co.?

Answer. No, sir; I think not. I think it was in 1920 a small block of the stock was issued to me and some others that I named so that we could control the board of directors in each company, but the bulk of the stock was not transferred, as I remember it. I may be mistaken, but that is the way I remember it.

Question. And it was issued in the four companies?

Answer. I think five shares, or a few shares, were issued to me and some people I named so that I could control the board of directors. That is the way I remember it.

Question. After January 1, 1920, all competition between the Thatcher Manufacturing Co. and the Travis, Essex, and Lockport companies ceased, did it not?

Answer. Well, practically; yes, I should say so.

Question. Of course, you could not tell exactly the particular date on which it ceased?

Answer. No.

Question. But it did cease?

Answer. There was not very rigid competition.

Question. And absolutely none at all after the deeds from the three companies to the Thatcher Manufacturing Co.?

Answer. I presume not, although I could not say as to that, but I do not think there was.

Question. When certain stock in the Travis, Essex, and Lockport companies was transferred or reissued to you and other persons designated by you was anything paid for the stock so issued to you?

Answer. No, sir.

Question. And nothing was paid by the other persons designated by you to whom stock was issued?

Answer. It was simply so I could control the organization.

Question. Simply for the purpose of providing record issue of the stock?

Answer. Well, it was simply so that I could control the board of directors of these companies. That is what it was for. As I remember, there was only a small portion of the stock transferred.

Question. Look at the stipulation and examine Exhibit L. Can you identify Exhibit L?

Answer. Yes, sir; painfully.

Question. You were one of the parties to the agreement of which Exhibit L is a copy?

Answer. I am.

Question. And the statements made therein to which you subscribed are correct, of course, are they not?

Answer. They are, more or less so.

Question. You at least thought so at the time, did you not?

Answer. Mr. Manderville was a party to this and I signed it.

Question. And that as disclosed by the stipulation is simply a copy of the agreement between you and the bond buyers?

Answer. Yes, sir.

Question. Now, please examine Exhibit Z–10, the last one in the book?

Answer. Yes, sir.

Question. Can you identify Exhibit Z–10?

Answer. I can.

Question. That is a copy of a letter written by you to Bonbright & Co., and Hemphill, Noyes & Co.?

Answer. No, that is a copy of a letter they wrote and I signed.

Examiner SHEPPARD. What is the date of the letter?

Answer. April 23, 1920.

Mr. BRINDLEY. A copy of a letter, then, which you signed?

Answer. Yes, sir.

Question. That statement was made in reference to the bond issue of Thatcher Manufacturing Co. to which we have referred?

Answer. Yes, sir.

Question. And the statements made therein to which you subscribed with your name were true, were they not?

Answer. No. Some of them were not true, but in the main they were true.

Question. They were made, of course, for the purpose of giving information about the sale of the bonds?

Answer. Yes. I never felt very proud of this, to tell you the truth of the matter.

Question. Mr. Baldwin, the Thatcher Manufacturing Co. can and did manufacture milk bottles with the Hartford-Fairmont bottle-making machines more cheaply than it could and did with the Owens bottle-making machinery, did it not?

Answer. Yes, sir; that is true.

Question. As a result of the acquisition of the right—the exclusive right—to use the Hartford-Fairmont machines in making milk bottles, the Thatcher Manufacturing Co. was enabled to manufacture milk bottles more cheaply than it did theretofore; is that true?

Answer. Yes, sir. After we got whipped into line; yes, sir.

Cross-examination:

Mr. SMITH. I want you to make clear, Mr. Baldwin, the nature of the Woodbury company. Have they ever produced milk bottles?

Answer. At one time they made a very few.

Question. How long ago was that?

Answer. Oh, I don't know. Eight or ten years ago.

Question. At the time of this transaction in August, 1919, were they making milk bottles?

Answer. No.

Question. Are they making any now?

Answer. No.

Question. Have they made any since?

Answer. No; they never made any more than two to three thousand gross in a year.

Question. So that at the time of this transaction there was no competition between the wares or product of the Woodbury company and the Thatcher Manufacturing Co.?

Answer. None, absolutely, and there has never been any since.

Question. There was a certain exception to the Hamilton license, was there not? There was an exception to the purchase of the Hamilton business in that the Hamilton company was allowed to continue in business in Allegheny County, were they not?

Answer. Yes, sir, and they are still continuing.

Question. Now, I want to give, Mr. Baldwin, for the benefit of the commission or anybody that ever knew the vast business, a little of the technique of it, and I am going to ask rather leading questions and you will stop me, Mr. Examiner, if I go too far——

Examiner SHEPPARD. I want to get the facts. That is what the commission is here for and that is what I want.

Mr. SMITH. There are practically three steps or processes in the making of bottles, roughly. There is, first, the large tank, maybe 10 or 15 feet in diameter, inside, where the molten glass stands?

Answer. Yes.

Question. And then next is the process of getting what is known as the gathering or the gob or a stream of that glass out of that tank. That was originally done in the hand art by the man with the punty?

Answer. No. With the man with the blowpipe.

Question. Then, the blowing part of that man's work was done—was taken over into the forming machine which blows the bottle. The gather is placed in an iron mold and air is used to expand the glass to the size of that mold. That is known as "blowing"?

Answer. Yes, sir.

Question. And, so, the process consists of the melting of the glass, the getting of the glass together from the furnace into the mold, and the blowing of the glass in the mold?

Answer. Yes, sir.

Question. Now, the Owen machine, as you have it, performs the last two of these functions—it both gathers glass from the pot and blows it—all in one machine?

Answer. Yes, sir.

Question. The Hartford-Fairmont process, so far as in your units, is practically a set of two machines, hooked up to each other to what is known as the feeder, which by a clay paddle dips or, rather, operates in the molten glass, surges the glass out over the dam in the required size; that glass runs down in the trough and is delivered into the mold of the forming machine?

Answer. Yes, sir.

Question. The two machines are hooked up so they operate in time with each other?

Answer. Yes, sir.

Question. But they are practically two machines operated as a unit?

Answer. Yes, sir.

Examiner SHEPPARD. That is, the Hartford-Fairmont machine?

Mr. SMITH. Yes. We call it a milk-bottle unit which consists of the feeder and the forming machine. The feeder is just a paddle which takes the place of the man with the punty rod.

Mr. SMITH. Now, there were, at the time of this transaction, and have been since, have there not, a number of other devices not controlled by the Hartford-Fairmont Co. which successfully deliver a gather from the furnace to the forming machine?

Answer. Yes, sir.

Question. Can you give me the names of some of those devices?

Answer. One of them is the Graham, which was bought afterwards by the Owens people; another is the Miller machine—a feeder; another is the Federal feeder; another is the O'Neill feeder and the Howard feeder.

Question. Are these machines generally on the market for purchase or license?

Answer. They are.

Question. Now, were there also in August, 1919, and are there now, machines not controlled by either Owens or Hartford-Fairmont which perform the forming function?

Answer. Yes, sir.

Question. What machines are those?

Answer. There is the O'Neill and the Miller and the Lynch. I do not know—there are some others—the Graham—there are several of them.

Examiner SHEPPARD. Are they all separate patents?

Mr. SMITH. They are all separate patents, not owned by either Hartford or Owens.

Mr. SMITH. So that in August, 1919, and now it would be entirely possible for the manufacturer of milk bottles to secure, either by purchase or license, from a number of different sources, a feeder on the one hand, and a forming machine on the other, and hook the two together and thus make a completely automatic milk-bottle machine?

Answer. Yes. Several of them are doing it now, namely, Winslow, Lamb, Burney-Bond, and the Atlantic Bottle Co. There are others doing the same thing. I think they are doing it at Richmond.

Question. So that the distinction made in the complaint of a completely automatic machine, at least as a single unit, is not a very important commercial distinction?

Answer. No, sir.

Question. Because while there are only these two machines—Hartford-Fairmont and Owens—that are leased as a single unit, there are various other machines that are not so leased but can be leased and put together?

Answer. Yes, sir. For example, the Woodbury Glass Co. has the Hartford-Fairmont feeder but is using the Lynch machine in making condiment wares.

Examiner SHEPPARD. You mean two different machines put together for a unit?

Answer. Yes, sir. The feeder is one part and the Lynch machine, in which they have no interest, nor the Owens, is put up there for a feeder, and delivers the metal into the mold and makes the bottle.

Mr. SMITH. The contracts with the Hartford-Fairmont Co., which the Thatcher company took over, specifically calls for a feeder and a forming machine as a unit, do they not?

Answer. Yes, sir.

Question. So that the exclusive character of these contracts applies to that unit?

Answer. Yes, sir.

Question. And to that unit only?

Answer. Yes, sir.

Question. Mr. Baldwin, I show you a license and lease No. 3 from the Hartford-Fairmont Co. to the Essex Glass Co., dated December 26, 1916, and ask you if that is one of the leases that the Thatcher company took over?

Answer. It is.

Question. And this was assigned to the Thatcher company?

Answer. Yes, sir.

Question. Suppose you read section 7 until I stop you.

Answer. "SECTION 7. *Number of licenses.*—It is agreed between the parties hereto that the licensors shall issue licenses for the use

of the said patented machinery for making milk bottles within the United States only to the four following named licensees, to wit: Lockport Glass Company, Lockport, New York; Essex Glass Company, Mount Vernon, Ohio; Travis Glass Company, Clarksburg, West Virginia; J. T. and A. Hamilton Company, Pittsburgh, Pennsylvania."

Question. Will you now read subsection C of that section 7?

Answer. "*Provided, further*, That if at any time during the term of said license it shall appear that in any locality or localities a fair proportion of the milk-bottle trade is not being supplied with the product of the said patented machinery or that said licensees are not supplying in the whole United States that proportion of the whole milk-bottle trade of the United States which was sold by them in the year from August 1, 1915, to July 31, 1916, then the licensor may by written notice to the within licensee require them within reasonable time to supply said locality or localities with the said fair proportion or supply the entire United States with their said 1915–16 proportion of the trade, and if the said licensor shall fail to do so within such reasonable time, then the licensor shall have the right to issue additional licenses, similar in terms with this license, to any other licensee or licensees to make up such deficiency, whether occurring in any said locality or localities or in the United States as a whole."

Question. All right. The word "licensor" applies to the Hartford-Fairmont Co.?

Answer. Yes, sir.

Question. This license is to the Essex Glass Co. Are the other licenses to the Lockport, Travis, and Hamilton companies similar?

Answer. Yes, sir.

Question. So that the result of that paragraph is that under certain conditions the exclusive character of that grant is modified?

Answer. Yes, sir.

Question. And the Hartford-Fairmont Company may issue licenses to others?

Answer. Yes, sir.

Question. Can you tell me how many furnaces outside of those controlled by the Thatcher company are now engaged in making milk bottles?

Answer. I will have to count them up. The Reed Glass Co.——

Question. How many furnaces?

Answer. Only one on milk bottles. The Atlantic Bottle Co. has three furnaces; the Burney-Bond Co. has two furnaces; Buck has one; Winslow has two furnaces. Mr. Lamb has one furnace and has let a contract to build another. The Liberty Glass Co. has one. The Chattanooga Glass Co. has one. The Richmond Glass Co. has one; the Diamond at Alexandria—I think that is the name—I think has two, but anyway call it one; there is one at Norfolk, Va. The J. Y. & A. Hamilton have one.

Question. That is only for Allegheny County?

Answer. That is only for Allegheny County.

Question. Suppose we leave that out.

Answer. And then on the Pacific coast, the Illinois Glass Co. has either two—I think they have only one working on milk bottles

and the Pacific has one working on milk bottles and each of the other factories have one working on milk bottles; there are four furnaces working on milk bottles on the Pacific coast.

Question. Did you give the Atlantic?

Answer. I gave the Atlantic—three furnaces.

Question. That is a total of 19——

Examiner SHEPPARD. Strike out the Hamilton.

Mr. SMITH. So that there are at least 19 furnaces not controlled by the Thatcher Manufacturing Co. almost all of them in operation, and possibly two of them in construction. While we are on that question, let me ask if this Diamond Glass Co. and the one at Jacksonville, Fla., and the one at Chattanooga, Tenn., and the Lamb Glass Co. in Ohio, are they in the course of construction or are they in operation?

Answer. They are all in operation unless it is the Chattanooga Glass Co. I do not mean Chattanooga I mean the one at Jacksonville, Fla. I have seen some of their literature, and one of their men met our salesman one of our salesmen and told him, first, told him that they would be manufacturing and selling bottles the 1st of August, and then afterwards he met him and told him it would be the 1st of October. Whether they are in operation now or not I do not know.

Question. The milk bottles produced by these furnaces which you have just named are sold in competition with the Thatcher company?

Answer. Yes, sir; very vigorous competition.

Question. Exhibit G of the stipulation, which is the contract of August 28, 1919, between yourself, Libbey, Ford, and the Sterling Glass Co., you are familiar with, Mr. Baldwin?

Answer. I am.

Question. Does that contract fairly express the transaction as you remember it?

Answer. I think it does. I haven't that entirely in my mind just now.

Question. I will go over one or two points for the examiner's benefit and everybody concerned. Let me rehearse that and see if I am correct in my statement on the gist of it. As I understand that contract, the stocks of the four companies meaning thereby Essex, Lockport, Travis, and Woodbury were purchased by money raised by a payment from the Stirling Glass Co. by notes discounted by you three gentlemen, the notes aggregating $1,610,000 and the contribution of the Sterling Glass Co. of $500,000. The individual notes were either signed or indorsed by all of you?

Answer. Yes, sir.

Question. That in the uncertainty as to the future development of the transaction, Mr. Libbey and Mr. Ford obtained the right to withdraw and be reimbursed for the contribution to the Sterling Company, and that if they did so you were to assume all the liabilities of that contract?

Answer. Yes, sir.

Question. What were the main liabilities of the contract?

Answer. The liability of the contract was to pay the $1,610,000 note.

Question. Held by the Guaranty Trust Co.?

Answer. Yes; and the $250,000.

Question. When you made that contract, did you know of any surety how you were going to finance that?

Answer. I did not. I thought Mr. Libbey was going to do it.

Question. Suppose, Mr. Baldwin, that after Mr. Libbey withdrew and the liabilities thrown upon you personally, the Thatcher Manufacturing Co. had been unable or unwilling and there had been nobody else able or willing to aid you in financing it, what would have been your position?

Answer. I would have lost everything I had.

Question. In other words, you would have had to pay the $1,610,000?

Answer. No; I would not have to pay——

Question. You would have been liable for it?

Answer. Yes, sir.

Question. That is the reason you were worried at that time?

Answer. Yes, sir.

Question. You had no assurance of any sort that the thing would take place that did take place—that the Thatcher company could finance and take over the assets?

Answer. No, sir.

Question. So that after that notice of withdrawal was given and for some time thereafterwards you were primarily responsible?

Answer. I was; yes, sir.

Question. Now, these stocks of the four companies were never transferred as of record to any except certain individuals, whoever they might be?

Answer. Yes; a small portion of it was transferred.

Question. To individuals?

Answer. To individuals.

Question. No single share of any of the stocks of these companies was ever transferred to the Thatcher Manufacturing Co.?

Answer. No, sir.

Question. When the purchase of the stock was made the stock was not changed on the records of the company?

Answer. No, sir; it was not.

Question. But inasmuch as you, Libbey, Ford, and the Sterling company had to pay the money for the purchase, you had, if anybody, the equitable ownership of these stocks?

Answer. Yes, sir.

Question. And in that sense you purchased them?

Answer. Yes, sir; that is right.

Question. Now, let me get a little further. Under that contract the Sterling Glass Co. had the privilege, upon the payment of the said notes, to take over the collateral. That was the stocks?

Answer. Yes, sir.

Question. As a matter of fact, the Sterling company never paid these notes, did it?

Answer. No, sir.

Question. Now, suppose that your fears had been realized—that after this liability had come upon you, you had gotten no assistance in financing and you had thereupon been obliged to pay all of these notes—over a million and a half—would it be your belief that you would then be entitled to these stocks?

Answer. Yes, sir.

Question. On the ground that you were the one responsible for the notes and, therefore, had the right to the collateral?

Answer. Yes, sir.

Question. Do you remember, Mr. Baldwin—this is a mere detail—as to whether there went with these notes and the collateral any formal collateral assignment of the notes authorizing the sale or in case of nonpayment of the notes—do you remember anything of that sort?

Answer. I think that they did have it; yes, sir.

Question. There probably was authority of that sort?

Answer. Yes, sir.

Question. You said once or twice, Mr. Baldwin, I think, that the Sterling company bought these stocks. In view of the statement that I have just made and that you have assented to, I do not think that was quite correct—possibly I misunderstood you. As I understand it, the Sterling company and you three gentlemen bought the stocks?

Answer. Yes, sir; that is what bought it.

Question. Now, you said that before this transaction that the Thatcher company controlled about 40 per cent of the milk-bottle production?

Answer. Yes, sir; that is about right.

Question. Have you any idea of what you control now?

Answer. About 60 per cent.

Question. Has that been decreasing somewhat or increasing?

Answer. Well, it has run along about the same. I think that during 1920, during that fall, with the shortage of material, and cars, etc., and our competitors laid down and let their factories close, we kept ours going, they took off a balance sheet in red—we got it up to 70 per cent—but now that they are in operation it is down to about 60 per cent. I make that statement because we have a National Bottle Manufacturers' report—they all report their business save two or three and we are getting by this report just a little over 60 per cent and with those that do not report we would cut it down to 60 per cent.

Question. There were certain advantages of the combination or purchase of these assets, as you like, which you did not name. In the first place, there was the elimination of cross freights?

Answer. Yes, sir.

Question. And made up a very much improved distribution system?

Answer. Yes, sir.

Question. In the second place, as I understand it, you greatly improved the methods throughout the various factories?

Answer. We have increased the output in one factory—it is up now to 40 per cent above what it was when we took it.

Question. Did you decrease the cost of the various factories by increasing the output?

Answer. Yes, sir.

Question. That is, you decreased the percentage of overhead?

Answer. Yes, sir.

Question. Did you have any advantage by large purchase of materials?

Answer. Yes, sir.

Question. Taking the report of which I mention in part, the period from August, 1919, through 1920, what were the general rates of advance in the cost of raw materials?

Answer. Well. I see these figures here, but they are not anywhere near large enough. I paid $2 a hundred for soda ash—I used to get it for 45 cents, but these competitors were paying 55 for it; when I paid $2, that represented a 400 per cent advance.

Question. How about sand?

Answer. We had a contract for sand in the east for $1.15 a hundred and it went up to $3.50 a hundred. Then we had to chase men down there to get the cars loaded and get the same. In our central western plant we had a contract running for five years at 65 cents per ton for same and we paid them as high as $2.60 a ton for it. Coal—we had a contract for $3 and $3.50. We bought six cars of coal that we paid from $11 to $13 a ton for it at the mine. Freight increased—this was not made until the last increase—freight increased just 100 per cent over what it was prior to the war. Labor increased a good deal more than 100 per cent and crating increased a full 300 per cent.

Question. What is the largest single item of cost of material?

Answer. Soda ash is the most important item.

Question. What is the next in importance?

Answer. The next is coal and crating.

Question. Now, the course of your prices, Mr. Baldwin. Can you give me an outline of them?

Answer. I can not. Our records would show we increased the price twice, I think, and got it up to about 100 per cent of what it was before the war, and then we started on the 1st of May by decreasing it—the 1st of May, 1921. We have made four reductions.

Question. How does it compare now with the pre-war prices?

Answer. It is a little above the pre-war prices.

Question. How much above?

Answer. I could not say how much, but if the freight was down to where it was—they have taken off 10 per cent of the freight—if freight was back to where it was, and we took that off, we would be down as low as we were before the war.

Question. To say nothing, however, of the still existing higher costs of materials?

Answer. We are paying $1.10 and $1.25 for soda ash at the present time. We are paying $2.25—well, we have different prices for sand—we are paying $2.25, $2, and $1.75 in the central western plant. We are getting it out there at 75 cents—they got in a war out there in the sand mines and we are taking advantage of it.

Question. And you have made these reductions. Could you have made them with the still large cost of materials, had it not been for the increased efficiency of your plant?

Answer. We could not. The price of milk bottles would have been far higher during the war period and after-war period, had we not bought out these competents.

Question. In that Exhibit K on page 3, as the examiner brought out, you used the language, "We purchased the stock of the companies named." In so far as there is any implication in that lan-

guage that the Thatcher company purchased the stock, is that correct or not?

Answer. That is not correct.

Mr. SMITH. That is all at present, Mr. Examiner. We wish to reserve the right to ask further questions to-morrow.

Examiner SHEPPARD. We will take an adjournment at this time until 9.30 o'clock to-morrow morning.

Now, to wit 5.50 o'clock p. m. same day, adjourned until Tuesday, August 15, 1922, at 9.30 o'clock a. m.

ELMIRA, N. Y., *August 15, 1922.*

Met pursuant to adjournment, 9.30 o'clock a. m.

Before: W. W. Sheppard, examiner.

Appearances: Mr. Brindley for the commission; Mr. Smith for the respondent.

Examiner SHEPPARD. Gentlemen, if you are ready, we will proceed. Mr. Smith, I believe you finished your cross-examination yesterday?

Mr. SMITH. I finished my cross-examination, yes. I will take Mr. Baldwin on the direct. I will make him my witness now.

Examiner SHEPPARD. All right. Go ahead.

RESPONDENT'S TESTIMONY.

FRANCIS H. BALDWIN was thereupon called as a witness on behalf of respondent, and having previously been sworn, testified as follows:

Direct examination by Mr. SMITH:

Question. Mr. Baldwin, I show you Exhibit L of the stipulation, which is an agreement entered into on April 10, 1920, between yourself and Bonbright & Co. and Hemphill, Noyes & Co. in regard to the bond issue and ask you to read the second paragraph.

Answer. "Whereas the seller represents the control of at least two-thirds or more of the outstanding preferred stock and two-thirds or more of the outstanding common stock of the Thatcher Manufacturing Co., a corporation of the State of New York (hereinafter referred to as the corporation), for the purpose of carrying out this plan hereinafter set forth and entering into this agreement——"

Question. The word "seller" there represents yourself?

Answer. Yes, sir.

Question. You say the seller represents a control of at least two-thirds or more of the outstanding preferred stock and two-thirds or more of the outstanding common stock of the Thatcher Manufacturing Co. Just what do you mean by "represents" there?

Mr. BRINDLEY. We desire to object to that question because it calls for a conclusion of the witness and because it calls or seeks to alter or vary by parol testimony the terms of a written instrument.

Mr. SMITH. I will withdraw my question, Mr. Examiner. I will take it up in another shape. Did you, as a matter of fact, control, yourself, a majority of the voting stock at that time of the Thatcher Manufacturing Co.?

Mr. BRINDLEY. We object to that question on the same grounds assigned heretofore to the question just withdrawn.

Examiner SHEPPARD. Mr. Baldwin can testify to that from his own knowledge—I will have to allow the question.

Answer. I did not. I owned a majority of the common stock of the Thatcher Manufacturing Co. and a fair holding of the preferred stock. The preferred stock had the same voting power as the common stock. I did not own a majority of the voting stock of this company.

Mr. SMITH. Did you, when that document was written, hold the proxies of other stockholders of the Thatcher Manufacturing Co. for any purpose?

Answer. I did not at the time.

Question. I show you the same Exhibit L and ask you to read Section IV.

Answer. "Either before or at the time of the organization of the corporation as hereinbefore provided, the corporation shall acquire all of the assets and business of the following companies, to wit: Travis Glass Co., Essex Glass Co., the Lockport Glass Co., all of the shares of stock of said companies being now owned by the Stirling Glass Co., whose shares of stock are all owned by the corporation; and at the same time the corporation shall also acquire all of the common stock of the Woodbury Glass Co., which is now owned by the Sterling Glass Co."

Question. You said there all shares of stock of said companies being now owned by the Sterling Glass Co. Was that the fact at the time that letter was written?

Mr. BRINDLEY. I object to that question.

Mr. SMITH. I think, Mr Examiner, I am entitled to show the fact.

Examiner SHEPPARD. Read the question again.

(Question repeated.)

Examiner SHEPPARD. What is the date of the letter?

Mr. BRINDLEY. It is a contract instead of a letter.

Mr. SMITH. April 10.

Examiner SHEPPARD. What is your objection, Mr. Brindley?

Mr. BRINDLEY. It seeks to vary or alter the terms of a written instrument by parol testimony and seeks to vary it subsequent to its execution and is an effort to contradict or change the terms or meaning of a written instrument subscribed by the witness himself.

Mr. SMITH. In answer to that I will say that while that really would apply, doubtless, in a case where we were endeavoring to enforce or deny the direct rights arising under instruments, this is a totally different situation. The obligations are not in issue here—there is no attempt made to enforce the obligation of this instrument here. We are simply endeavoring to set forth the actual facts. A statement has been made in this instrument which becomes relevant, possibly in a wholly disassociated case, and that statement, in our view, is incorrect and ought to be corrected to get the facts before the commission.

Examiner SHEPPARD. I will let Mr. Baldwin answer the question for what it is worth and see if it throws any new light or gives any additional facts for the commission's consideration.

Answer. It was not.

Examiner SHEPPARD. If the statement that Mr. Baldwin has said was a misstatement—was not the fact—let us have the facts for the record.

Mr. SMITH. Refresh your recollection by mental reference or otherwise to the contract of August 28, 1919. Who, actually, under that contract, did purchase the stocks of these companies?

Mr. Brindley. We object to that question because it also seeks to vary by parol testimony the terms of the written instrument of August 28, 1919.

Mr. SMITH. I am not attempting to vary it. I am merely by reference trying to refresh his memory. Possibly I have my sentence a little clumsy. I am not trying to vary that contract and say there is any mistake in it.

Examiner SHEPPARD. That is my impression.

Mr. BRINDLEY. Then it is objectionable because it calls for a conclusion of the witness.

Examiner SHEPPARD. This witness has a right to make conclusions as he testifies from his own knowledge.

Mr. BRINDLEY. But the contract speaks for itself.

Examiner SHEPPARD. But anything that the witness knows along these lines I think the witness has a right to answer. You may proceed.

Answer. Mr. Libbey, Mr. Ford, and myself and the Sterling company—the Sterling company put in $500,000. The other three put in $1,610,000.

Mr. SMITH. Was the Thatcher company at any time from August, 1919, to the present date the record owner of any of the stocks of the four companies under discussion or any parts of them?

Answer. It was not.

Mr. BRINDLEY. What date do you refer to in that question?

Mr. SMITH. From August, 1919, to the present.

Question. Was the Sterling Glass Co. at any time between those dates the record owner of any of the stocks of those four companies?

Answer. It was not.

Question. Did the Thatcher company or the Sterling company at any time between those dates issue or attempt to issue any proxies on any of the stocks of these four companies?

Answer. No, sir.

Question. You and Mr. Libbey and Mr. Ford and the Sterling company, as you have testified, were the equitable owners of the stocks of these four companies. Suppose you had at any time after becoming such owner—suppose you four parties had agreed to transfer either of those stocks or the assets of those four companies to the Owens Bottle Co., for example. Could you have done it?

Mr. BRINDLEY. We object to that question because it calls for the legal conclusion of the witness and asking his interpretation of legal instruments or documents in evidence, and also seeks for the answer of the witness on a supposed situation.

Examiner SHEPPARD. I was going to say, Mr. Smith, I think that is a supposition that has no real bearing on the case—something that is extraneous.

Mr. SMITH. I will withdraw that question. I think it is rather doubtful. It is an argument to be deduced from the papers themselves.

Question. Will you go through—just glance through—the exhibits to this stipulation and point out to me any that indicate any initial action on the part of the Thatcher Manufacturing Co. of whatsoever nature?

Mr. BRINDLEY. We object to that question because it calls for a conclusion on the part of the witness.

Examiner SHEPPARD. As I understand it, the Thatcher Manufacturing Co. has already signed its agreement as to the stipulation?

Mr. SMITH. Yes; that is true.

Examiner SHEPPARD. So the question can have no bearing upon it, one way or the other.

Mr. SMITH. I will withdraw that question—that is really a matter of argument.

Question. Mr. Baldwin, I show you a document entitled "Assignment of license." Will you tell me what that is?

Answer. This is the assignment by the Hartford-Fairmont Co. of the licenses of the Essex Glass Co. to Thatcher Manufacturing Co.

Question. Be a little more correct, Mr. Baldwin—it is an assignment by the Essex company with the consent of the Hartford company?

Answer. Yes, sir; and signed by all of those people.

Question. What is the date of that?

Answer. The 1st day of June, 1920.

Question. I want to correct this in one more other respect. This is the assignment, simply, of license and lease No. 10?

Answer. Yes; license and lease No. 10.

Question. How many licenses were there altogether assigned by this way?

Answer. Eleven.

Question. This corresponded with the eleven Hartford-Fairmont feeders taken over by the Thatcher Manufacturing Co.?

Answer. Yes, sir; I assume so.

Question. Do you remember of your own knowledge the dates of these?

Answer. I do not.

Question. Will you be good enough to say what the dates are in each case?

Answer. Each one bears the date June 1, 1920.

Question. And the Hartford-Fairmont licenses—could they be transferred without the consent of the Hartford-Fairmont Co.?

Answer. No, sir.

Question. Mr. Baldwin, have you the production figures that the examiner asked for yesterday?

Answer. I have. These were taken, I am told, from our certified accountant's report. The first six months of 1917 Thatcher Manufacturing Co. made 184,535 gross; the second six months it was 169,036 gross. The first year was 353,571 gross—in 1917; in 1918, 300,995 gross; in 1919, 290,452 gross; in 1920, 833,870 gross.

Examiner SHEPPARD. Have you the 1921 figures there?

Answer. No, sir; I can get those for the first six months—our auditor's report is not out yet, but I presume they can get them. The accountants haven't got their report in as yet.

Mr. SMITH. In paragraph 1 of the complaint it is stated that the Thatcher Company has branch offices and manufacturing plants at Kane, Streator, Clarksburg, Cedar Grove, and Lockport. As a matter of fact, does the company have branch offices there?

Answer. No, sir; none of them. It has factories there, but not branch offices.

Question. Now in paragraph 2 of the complaint it is said that the Travis Glass Co., on August 28, 1919, had a branch plant at Cedar Grove, W. Va. As a matter of fact, was there a branch plant at Cedar Grove at that time?

Answer. They were in the course of construction at that time.

Question. But not completed?

Answer. No, sir; and we made a mistake in completing it.

Question. In paragraph 3 of the complaint it is said that the Owens bottle-blowing machine is a modern, improved, patented machine, etc. Were the Owens machines that your company was running, modern machines?

Answer. Well, we put the first ones in in 1905 and they have made some improvements on some machines since then and enlarged the machines. We have at this plant here two 10-arm machines. They have been in use up here, I guess, about 10 years and they have had them on the market for several years prior to that.

Question. How old is the youngest of your Owens machines?

Answer. I think I can safely say 10 years.

Question. Paragraph 12 of the complaint. The first sentence reads as follows: "On December 11, 1919, Libbey and Ford decided to exercise their option to withdraw and on said date so notified Baldwin and the respondent." Was that notification to the Thatcher company or to you personally?

Answer. It was to me, personally. None was sent to Thatcher Manufacturing Co.

Question. In paragraphs 15 and 16 there is a discrepancy that I would like to have you clear up. It is stated, in substance, in paragraph 15 of the complaint that "prior to June, 1920, the Thatcher company accomplished a bond issue in the sum of $2,000,000 secured by a first mortgage to the Guaranty Trust Co., of New York, as trustee, on all the assets of the Thatcher Manufacturing Co., Sterling Glass Co., Travis Glass Co., Essex Glass Co., Lockport Glass Co., and the capital stock of Woodbury Glass Co." In paragraph 16 of said complaint it is stated that "'in the month of June, 1920,' the said Travis, Essex, Lockport, and Sterling companies transferred all their assets, rights, licenses, and properties to the respondent." Now, as a matter of fact, Mr. Baldwin, that bond issue was not accomplished until after the transfer of these properties to the Thatcher Manufacturing Co., was it?

Answer. Some months afterward; yes, sir.

Question. The bond issue—the bond documents—were dated back to what date?

Answer. April 1.

Question. 1920?

Answer. 1920.

Question. But the transaction was not completed until some time when?

Answer. It was, I think, about the 25th or 26th of August.

Question. 1920?

Answer. 1920.

Question. In paragraph 17 of the complaint it is stated, in substance, that the respondent caused the assets, rights, property of the Travis, Essex, Lockport, and Sterling companies to be conveyed to it, the respondent. Now, as a matter of fact, leaving out the Stirling company, did the Thatcher company or the gentlemen who owned the stocks of th se three other companies cause that transfer?

Answer. They did not own the stock of either of those companies outside of the Sterling.

Question. That is, the Thatch r Manufacturing Co. didn't?

Answer. That is right.

Question. So that they didn't cause the transfer. The transfer was caused by the individuals who owned the stock?

Answer. Yes.

Question. All the machinery licensed by Thatcher Manufacturing Co. from Owens company and Hartford-Fairmont is, as I understand it, covered by United States patents?

Answer. It is.

Question. Patented machinery?

Answer. It is.

Question. You said a while ago, Mr. Baldwin, that you never held a majority of the voting stock of the Thatcher company.

Answer. I never did; no, sir.

Question. Have any others, so far as you know?

Answer. No. I was the largest stockholder.

Question. Would it be now possible to so segregate the assets that were taken over by the Thatcher company from the four companies—Hamilton, Lockport, Travis, and Essex—as to restore the status quo which existed when that transfer was made?

Mr. BRINDLEY. We object to that question because it is calling for a conclusion of the witness.

Examiner SHEPPARD. That is a direct response to our allegation. Let him answer.

Answer. No, sir; I do not think it could be.

Mr. SMITH. Those assets being changed very considerably in form, I take it?

Answer. Very materially—they are all mixed together.

Question. The capital stocks of the Essex, Travis, Lockport, and Sterling companies no longer exist, I understand?

Answer. No, sir; they do not.

Mr. SMITH. That is all, Mr. Examiner.

Examiner SHEPPARD. Mr. Brindley, I want to ask Mr. Baldwin a few more questions and perhaps you would like to have me get mine in before you cross-examine him.

Mr. BRINDLEY. As you wish.

Examiner SHEPPARD. Just a few questions, Mr. Baldwin. Mr. Baldwin, where did the money come from which was paid by you and your associates to Mr. Libbey and Mr. Ford when they withdrew?

Answer. There was no money paid to Mr. Ford. After a time, I thought it was not until September, but my attorneys tell me I am

mistaken—the Thatcher Manufacturing Co. paid Mr. Libbey in June, I think it was, the $250,000 and interest on his stock.

Question. And the same was done with Mr. Ford?

Answer. There was not any money paid to Mr. Ford. He put in no money.

Question. Who took care, then, of the note by Mr. Ford to the Guaranty Trust Co.?

Answer. Eventually it was paid by Thatcher Manufacturing Co. out of the proceeds of these bonds.

Question. I see. It virtually and, as a matter of fact, the Thatcher Manufacturing Co. took care of the obligations of both of these gentlemen?

Answer. They did; yes, sir.

Question. Now, Mr. Baldwin, what effect on the stockholders of the Thatcher Manufacturing Co. was had—I mean the individual stockholders in your company—by the acquisition of the properties—physical assets, etc., of the companies here mentioned?

Answer. Well, as it has turned out, it has been quite beneficial for them.

Question. I did not mean in that way, Mr. Baldwin. I mean those you had—stockholders of the Thatcher Manufacturing Co. individually holding so much stock. You acquired by the purchase of these other three companies—the Essex, Lockport, and Travis—a million or more dollars more of assets than you had in your old organization.

Answer. Yes, sir.

Question. Was there any additional stock issued by the Thatcher Manufacturing Co. to the stockholders of record prior to the junction of these other companies?

Answer. You mean as a stock dividend?

Question. Yes, I mean as a stock dividend?

Answer. No, sir; there has never been a stock dividend in our company.

Question. Well, did the addition of these three other companies make any change in the amount of your capital stock?

Answer. We reorganized our companies.

Question. When was that reorganization?

Answer. It was in June, 1920. I do not remember the exact date.

Question. Under your reorganization was the new distribution of stock to give the stockholders of record of the Thatcher Manufacturing Co. prior to the incorporation of the three companies—Travis, Essex, and Lockport—the benefit of the acquisition of this additional stock?

Answer. No.

Question. What arrangement was made so as to reflect to the stockholders any benefits from the acquisition of these three companies?

Answer. The increase of their stock—the value of their stock.

Question. So a stockholder who had, say, 10 shares prior to the acquisition of these three companies, would only have the same amount afterwards? Is that so?

Answer. He would have, in my judgment, the value and if he had undertaken to have sold it he could not have got $100 for 4.4 shares—in fact, some of the stock was sold for less than that after that.

Question. Well, then, you would say the acquisition of these three companies enhanced the value of your stock or decreased it?

Answer. As it has developed, it has enhanced it.

Question. So a man who had 10 shares of stock prior to the acquisition of these companies, his stock is worth more to-day than it was then?

Answer. Yes, sir; it is. We have made money all the time.

Question. Now, coming again to the occasion when Mr. Libbey and Mr. Ford, under their agreement, withdrew from their part of the procedure. That left you as the sole owner, personally, of the three companies mentioned and a half interest in the stock of the Sterling Glass Co., the other half being owned by the respondent, the Thatcher Manufacturing Co., amounting to $250,000. Is that correct?

Answer. That is correct. Of course, I would put it "the equitable owner."

Question. Now, when Mr. Libbey and Mr. Ford retired from their interests or their liabilities under the two notes that they had given to the bank——

Answer. Three notes.

Question. Well, they were on two?

Answer. They had indorsed the other.

Question. All right. Make that three notes—you and your associates made three notes. You under your contract assumed their rights and benefits and liabilities under the three notes?

Answer. Yes, sir.

Question. So you, therefore, and the respondent were entirely liable on the whole contract—the respondent to the extent of $250,000 from its interest in the Sterling company?

Answer. I should think so; yes, sir.

Question. And subsequently thereto you transferred your interests entirely to the Thatcher Manufacturing Co., merging the entire interest in the respondent. Is that correct?

Answer. I afterwards had the companies which I controlled transfer their assets to the Thatcher Manufacturing Co. There was no formal transfer by me of anything to the Thatcher Manufacturing Co.

Question. Yet you were the owner of the assets of all three of these companies?

Answer. I was, and had the companies themselves transfer their assets to Thatcher Manufacturing Co.

Question. Was there any valuable consideration given at that transfer?

Answer. Well, they were giving us the mortgage and paying the notes and assuming the debts.

Question. I mean, Mr. Baldwin, that you, as the majority owner of the assets of the three companies, obtained from you, having paid therefor the interests of Ford and Libbey. Now, when you, individually, or the three companies as a unit which, as appears to have been the case, transferred their interest to the respondent, was there any valuable consideration offered to you for your interest?

Answer. No money or property was transferred to me. They were to include these properties in their mortgage and issue bonds upon it and to pay the notes and the indebtedness on which I was liable.

Question. I want to know a little bit more about this. You say these three companies gave a mortgage?

Answer. No, sir; I said that the Thatcher Manufacturing Co. gave a mortgage and issued its bonds.

Question. So, after all, and as a matter of fact, the respondent did by the issuing of the $2,000,000 bond issue, take up your obligation—your personal obligation—on the three notes with which you purchased the stock of the three companies—Essex, Travis, and Lockport—and also covered the interest which had been assumed by the respondent in the Sterling Glass Co.; that is, the $250 000 interest?

Answer. I will answer it in this way: The proceeds of that bond issue with other money paid these notes and other indebtedness that I was liable upon. Thatcher Manufacturing Co. was not paid back the $250,000—it simply had that in as an investment. That is the way I understand it, Mr. Examiner.

Question. Thatcher Manufacturing Co., or the respondent, had $250,000 invested in the Sterling Glass Co., didn't it?

Answer. Yes, sir.

Question. What became of that interest when the Sterling company was dissolved?

Answer. There wasn't anything ever paid back to the Thatcher Manufacturing Co.

Question. That $250,000 was represented in stock, wasn't it?

Answer. Yes.

Question. What became of it when the stock was disbanded—thrown away?

Answer. The Thatcher Manufacturing Co. had it; there is no question about that.

Question. I think so, too.

Answer. What you were getting at is perfectly correct, but the wording of that they weren't paid back——

Question. We have everything accounted for except the $250,000 of stock issued by the Sterling company, which seems to have dissolved into thin air, and I want to know——

Answer. I will say that the Thatcher Manufacturing Co. had it.

Question. You mean the assets?

Mr. SMITH. You mean the assets?

Answer. Yes.

Examiner SHEPPARD. So now, as a matter of fact, and at present, the entire assets—physical and otherwise, tangible and otherwise, good will, etc.—of the Essex, Travis, and Lockport companies are vested in the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Cross-examination:

Mr. BRINDLEY. I believe it will be advisable for me to trace again, at least to a certain extent, this transaction. It may be necessary for me to rehearse something that we have already gone over, but I am not doing it for the purpose of lengthening the record but to make it clear, at least, to myself. Mr. Baldwin, I believe you stated yesterday that when you first conferred with Mr. I. T. Axton in regard to the transaction which he submitted to you that you did not know that Mr. Axton held or possessed a cash option on the stock of

Travis, Essex, Lockport, and Woodbury companies and the milk-bottle business and license and machine of the Hamilton company?

Answer. I did when he came and asked me to take hold of it.

Question. You did not know that at your first conference with Mr. Axton?

Answer. I knew at the first talk I had with Mr. Axton. We did not have much of a conversation. I supposed at that time that it was simply the Travis and Lockport and the cash option on the Essex Glass Co., and the Hamilton milk-bottle business and machine. They told me that at that time. I did not know at that time and for some time after that he had a cash option on the Woodbury Glass Co., the Travis Glass Co., and the Lockport Glass Co.

Question. Subsequent to your first meeting with Mr. Travis did you not ascertain that he possessed a cash option on the capital stock of the Travis, Essex, Lockport, and Woodbury companies?

Answer. Some time after, yes, sir.

Question. You also ascertained that he had an option or a contract or agreement which covered the milk-bottle business and the Hartford machine and license held by the Hamilton company?

Answer. Yes, sir, and the Essex company.

Question. Pursuing your negotiations with Mr. Axton, it was finally agreed that you would meet at the office of the Guaranty Trust Co., of New York, in New York City in August, 1919, and close the transaction, was it not?

Answer. Yes, sir.

Question. Now, on August 27 and 28, 1919, you and Mr. Libbey and Mr. Ford met Mr. Axton and some other stockholders of the four companies at the Guaranty Trust Co., in New York City?

Answer. No, sir.

Question. It was agreed then that you and your associates would meet at the Guaranty Trust Co. in New York City the 27th and 28th of August, 1919?

Answer. Yes, sir.

Question. And you met there that day?

Answer. Yes, sir.

Question. At the same time with Mr. Axton and the persons who held, owned, or controlled the stock in the Travis, Essex, and Lockport and Woodbury companies were also in New York City at the Guaranty Trust Co.?

Answer. Yes, sir.

Question. You and your associates had advised Mr. Axton that you would complete the transaction that day?

Answer. Yes, sir.

Question. The transaction which you were to complete with Mr. Axton was the purchase of the stock in the Travis, Essex, Lockport, and Woodbury Glass Cos., was it not?

Answer. Yes, sir.

Question. On the 28th day of August, 1919, three notes were executed by you and Mr. Libbey and Mr. Ford to the Guaranty Trust Co., as receipted in the agreement dated August 28, 1919?

Answer. Yes, sir.

Question. A note was made by you, and another by Mr. Libbey, and another by Mr. Ford?

Answer. Yes, sir.

Question. All payable to the Guaranty Trust Co.?

Answer. Yes, sir.

Question. Each of you indorsed the notes of the other two, also?

Answer. Yes, sir.

Question. And all three of you were equally bound on all three notes?

Answer. Yes, sir.

Question. These notes amounted in the aggregate to $1,610,000, did they not?

Answer. Yes, sir.

Question. And that amount of money was advanced by the Guaranty Trust Co.?

Answer. Yes, sir.

Question. In addition to that sum, there was also in New York at the Guaranty Trust Co. the sum of $500,000 secured by the sale or issuance of stock in the Sterling Glass Co.?

Answer. Yes, sir.

Question. The money derived from both sources was then and there used to purchase all the stock in the Travis, Essex, Lockport, and Woodbury Glass Cos., was it not?

Answer. Yes, sir; I think that is correct.

Question. Some officer or agent of the Guaranty Trust Co. met Mr. Axton and the other stockholders of the four companies and delivered to them the amounts to which they were respectively entitled for the stock respectively held by them?

Answer. Yes, sir.

Question. And the stock in the four companies was duly indorsed in blank at that time or prior thereto by the respective holders of the stock in the four companies?

Answer. Yes, sir.

Question. And the stock in the four companies was delivered to the Guaranty Trust Co. and held by it as collateral security for the three notes given by you, Ford, and Libbey?

Answer. Yes, sir.

Question. Then, immediately following that transaction, the contract of August 28, 1919, a copy of which is attached to the stipulation as Exhibit G, was entered into by you, Libbey, Ford, and the Sterling Glass Co.?

Answer. Yes, sir.

Question. The transaction at the Guaranty Trust Co. on August 28, 1919, was the acquisition of the stock in the Travis, Essex, Lockport, and Woodbury companies, was it not?

Answer. Yes, sir.

Question. I believe you stated that the notes given by you, Libbey, and Ford to the Guaranty Trust Co. on August 30, 1919, were demand notes?

Answer. Yes, sir.

Question. But that you had an agreement by which the loan would be carried by the Guaranty Trust Co. for at least a year?

Answer. No. For one year. No "at least."

Question. Was there ever any change in these notes or the giving of other notes in place of the three first given by you, Ford, and Libbey to the Guaranty Trust Co.?

Answer. No, sir.

Question. Then the notes given by you on the 28th of August, 1919, remained with the Guaranty Trust Co. until they were paid out of the proceeds of the bond issue and the increase in the capital stock of the Thatcher Manufacturing Co.

Answer. Yes, sir.

Question. And these three notes to the Guaranty Trust Co. were paid entirely out of the proceeds from the Thatcher Manufacturing Co. bond issue and the increase in capital stock of the Thatcher Manufacturing Co.?

Answer. And profits—the money of Thatcher Manufacturing Co.; yes, sir.

Question. The money of the Thatcher Manufacturing Co. paid and discharged these three notes?

Answer. Yes, sir.

Question. It was agreed between you and Mr. Libbey, as recited in the contract of August 28, 1919, that in a certain event he might retire from the transaction?

Answer. Yes, sir.

Question. That agreement is recited in the contract of August 28, 1919?

Answer. Yes, sir.

Question. And, as recited in that contract, it referred to the fact that he wished to bring into the transaction the Hartford-Fairmont patents?

Answer. Yes, sir.

Question. Now, that expected bringing in of the Hartford-Fairmont patents or interests was not consummated?

Answer. No, sir.

Question. And in accordance with the agreement and the contract, Mr. Libbey and Mr. Ford desired to retire?

Answer. Yes, sir.

Question. Can you recall the date, or approximately the date, when Mr. Libbey ascertained that he could not secure the Hartford-Fairmont interests?

Answer. No; I can not give the date. He could have secured it, but he could not quite agree on price.

Question. Can you tell us approximately when it was that he abandoned the idea of securing the Hartford-Fairmont interests?

Answer. No; I do not think I can. I think it was some little time after the giving of this note. It was, of course, between then and December 11, 1919, when he notified me that he would not go on.

Question. So, prior to December 11, 1919, it was determined, at least, that Mr. Libbey could not acquire those interests?

Answer. Yes, sir.

Question. Then Mr. Libbey and Mr. Ford gave the notices dated December 11, 1919, copies of which are attached to the stipulation as Exhibits I and J?

Answer. Yes, sir.

Question. Now, you received the original of Exhibits I and J?

Answer. I did.

Question. After the receipt of the notices from Mr. Libbey and Mr. Ford dated December 11, 1919, was there any change in the situation or the notes at the Guaranty Trust Co.?

Answer. No, sir. I went to see Mr. Libbey and told him that this put a different aspect on the case for me, which he readily saw, and asked him if he would not allow his name to continue there as security, and he said he would—he would give me reasonable time to get out of the matter. We had a very friendly talk and he allowed it to continue.

Question. And so the three notes originally given to the Guaranty Trust Co. by you and Mr. Libbey and Mr. Ford simply remained with and at the Guaranty Trust Co. until they were finally paid by the bond issue and stock increase of the Thatcher Manufacturing Co., did they not?

Answer. Yes, sir.

Question. On January 1, 1920, it was known by you that Mr. Libbey and Mr. Ford would not remain in the transaction with you in the acquisition of the stock of the four companies?

Answer. Yes, sir.

Question. And subsequently to January 1, 1920, you, of course, were very much interested and engaged in the question of financing the proposition and discharging the obligations of yourself, Mr. Libbey, and Mr. Ford to the Guaranty Trust Co.?

Answer. Yes, sir.

Question. Please examine Exhibit M of the stipulation. Can you identify that Exhibit M?

Answer. Yes, sir; I guess so.

Question. What is it?

Answer. It is a special meeting of the stockholders of Thatcher Manufacturing Co. held at the office of the company in Elmira, N. Y.

Question. It is a copy of the minutes of that special meeting?

Answer. Yes, sir.

Question. Now, what was provided at that special meeting of April 12, 1920? Just tell the purpose for which it was called and what principal transaction occurred that day.

Answer. The purpose of the meeting was to increase the capital stock from $1,000,000, consisting of 10,000 shares of par value of $100, to $1,625,000, to consist of 16,250 shares of the par value of $100 each, and a resolution was offered and adopted increasing it.

Question. Now, how much increase in the capital stock of the Thatcher Manufacturing Co. did that amount to, in dollars?

Answer. It amounted to $625,000.

Question. Now, is that the increase in capital stock to which you have heretofore referred?

Answer. Yes, sir.

Question. The stock of the Thatcher Manufacturing Co. was accordingly duly increased in accordance with that special meeting of April 12, 1920?

Answer. It was. I could not state whether all of that was sold or not. Yes; it was all sold—it brought in $625,000.

Question. Now, examine, please, Exhibit L of the stipulation and see if you can identify Exhibit L.

Answer. Yes, sir.

Question. That is a copy, as stipulated, of the agreement between you, Hemphill, Noyes & Co., and Bonbright & Co.?

Answer. Yes, sir.

Question. You will observe that paragraph 1 of that agreement recites that the "seller"—yourself—proposed to cause the corporation to increase its stock as recited in paragraph 1?

Answer. Yes.

Question. And now that stock increase was accordingly carried out?

Answer. Yes, sir.

Question. You will observe further in Exhibit L, in paragraph 5, that it is provided that the "seller" should also cause the corporation to authorize, make, and execute an issue of $2,000,000 of corporate bonds?

Answer. Yes, sir.

Question. Now, that bond issue of $2,000,000 as provided in that agreement was also carried out, was it not?

Answer. It was.

Question. And the bonds were issued and sold?

Answer. Yes, sir.

Question. Now, the reorganization of the corporation to which you have heretofore referred was carried out in accordance with that agreement, as set forth in the agreement of April 10, 1920, between you and Hemphill, Noyes & Co. and Bonbright & Co., was it not?

Answer. Yes, sir.

Question. You had agreed, as recited in the contract between you, Libbey, and Ford and the Sterling Glass Co. of August 28, 1919, to take up or assume the liability of Ford and Libbey, as provided in that contract in the event they wanted to withdraw?

Answer. Yes, sir.

Question. In addition to agreeing to hold them harmless from liability on the three notes to the Guaranty Trust Co., you also agreed to repay to Mr. Libbey the $250,000 he had invested in the stock of the Sterling Glass Co., did you not?

Answer. Plus the interest; yes, sir.

Question. Now, Mr. Libbey was not immediately paid that money for his interest?

Answer. No, sir; he was not.

Question. In other words, he waited until you carried out that financial transaction evidenced by the increase in the stock of the Thatcher Manufacturing Co. and the bond issue of $2,000,000?

Answer. Yes, sir.

Question. From what source was Mr. Libbey repaid his $250,000 invested in the capital stock of the Sterling Glass Co.?

Answer. He was paid by check of the Thatcher Manufacturing Co. out of its profits and sales of stock.

Question. According to the best of your recollection, was Mr. Libbey repaid for his investment in the stock of the Sterling Glass Co. prior to the bond issue of the Thatcher Manufacturing Co.?

Answer. As refreshed by what I am told; yes.

Question. So, it is true, is it not, as a matter of fact, that the investment of $250,000 of Mr. Libbey in the stock of the Sterling Glass Co. was paid by the money of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And, thereupon, the Thatcher Manufacturing Co. became the owner of the stock in the Sterling Glass Co. held by Mr. Libbey?

Answer. Yes, sir.

Question. And the Thatcher Manufacturing Co. was then the owner of all of the stock of the Sterling Glass Co. except about eight shares issued to officers, agents, or employees of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. For the purpose of qualifying directors and officers?

Answer. Yes, sir.

Question. The $2,000,000 bond issue was finally completed and the proceeds were delivered to the Thatcher Manufacturing Co., were they not?

Answer. Yes, sir.

Question. Now, what disposition was then made of the large part of those proceeds?

Answer. I paid the notes—those three notes—that was the first thing I did——

Question. The first thing you did with the proceeds was what?

Answer. I paid the three notes which have been referred to as given August 28, 1920.

Question. By you, Ford, and Libbey?

Answer. Yes, sir.

Question. The first job you did after getting the proceeds of the $2,000,000 bond issue was to pay the notes at the Guaranty Trust Co.?

Answer. Yes, sir.

Question. And that was paid, now, by the funds of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And those notes were paid and discharged?

Answer. Yes, sir.

Question. Now, what disposition was made of the stock attached to those notes, when the notes were paid?

Answer. The companies had been dissolved—there was no stock.

Question. Had they actually been dissolved at that date?

Answer. Yes, sir.

Question. State to the best of your recollection when you paid the three notes given to the Guaranty Trust Co.?

Answer. The last of August, 1920—somewhere from the 25th to the 27th, I should say. I know it was on a Saturday.

Question. What was delivered to you when you paid the three notes at the Guaranty Trust Co.?

Answer. Frankly, I do not know that there was anything delivered. I assume they delivered the stock of those companies to us and canceled the notes—I photographed the canceled notes. I simply remember the canceled notes and the photographs of them, but the stock, I do not remember—I believe it was all delivered to Mr. Mandeville——

Question. Who was with you at the time?

Answer. Mr. Mandeville.

Examiner SHEPPARD. Was Mr. Mandeville at that time a vice president of the Thatcher Manufacturing Co.?

Answer. I think he was.

Question. And also its counsel?

Answer. Yes, sir.

Question. Mr. Baldwin, please look at Exhibit S of the stipulation?

Answer. Yes.

Question. Can you identify Exhibit S?

Answer. Yes, sir.

Question. You will observe from Exhibit S that it is a notice addressed to the Travis Glass Co. and the board of directors there and is signed by H. E. Travis, P. W. Robinson, F. E. Baldwin, F. L. Collins, and R. W. Niver and that they certify in Exhibit S that they have acquired all the shares of the capital stock of the Travis Glass Co.?

Answer. Yes, sir; it so certifies here.

Question. Now, Mr. Travis was one of the original stockholders in the Travis Glass Co. who sold the stock on August 28, 1919, was he not?

Answer. Yes, sir.

Question. Who is P. W. Robinson?

Answer. He is president of a bank and was one of the Travis Glass Co.'s directors in Clarksburg, W. Va.

Question. And he also sold his stock on the 28th day of August, 1919?

Answer. Yes, sir.

Question. Now, Exhibit S recites that F. E. Baldwin, F. L. Collins, and R. W. Niver are also among the stockholders of the Travis Glass Company?

Answer. Yes, sir.

Question. When did they become stockholders of the Travis Glass Co.?

Answer. I can not tell you.

Question. Can you approximate the time?

Answer. I can not. I have no memory in regard to the transaction. Mr. Mandeville took care of the matter and he did what he said. I assume that stock was transferred to us.

Question. Do you recall whether or not you individually put any money or other consideration in any of the stock of the Travis Glass Co.?

Answer. I do not.

Question. Is it not a fact that the capital stock of the Travis, Essex, Lockport, and Woodbury companies was acquired on the 28th day of August, 1919, the same being acquired at the Guaranty Trust Co., of New York?

Answer. Why, it would seem to me to follow as a matter of law, although I have no recollection of the matter at all. We paid the notes and eventually took the stock.

Examiner SHEPPARD. Repeat the question.

(Question repeated.)

Answer. Yes, I think that is right. I thought you said 1920. I misunderstood your question.

Question. The fact is that the stock of the Travis, Essex, Lockport, and Woodbury companies was acquired from the then owners of it or former owners of capital stock in these companies at New York City on August 28, 1919?

Answer. Yes, sir.

Question. Now, this stock was acquired from the proceeds of the three notes above mentioned and the $500,000 of the Sterling Glass Co.?

Answer. Yes, sir.

Question. Now, at that time, the Travis Glass Co., the Essex Glass Co., and the Lockport Glass Co. were engaged in the manufacture and the sale of milk bottles in competition with each other and with the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. That is a fact, is it not?

Answer. That is a fact, yes, sir; and other manufacturers.

Question. On August 28, 1919, the Thatcher Manufacturing Co. was engaged in the manufacture and the sale of milk bottles in interstate commerce with the Travis, Essex, and Lockport Glass Cos., was it not?

Answer. Yes, sir; and others.

Question. And others as well. Now, you say that on the 28th day of August, 1919, the Woodbury Glass Co. was not engaged in manufacturing and selling milk bottles?

Answer. No, sir; they were not; no, sir.

Question. And you also say that on that date the Woodbury Glass Co. was not in competition with the Thatcher Manufacturing Co. or the Travis, Essex, or Lockport companies or either of them?

Answer. No, sir; it was not.

Question. But the stock of all four companies was acquired on the same day and at the same time and by the same transaction, was it not?

Answer. Yes, sir.

Question. Now, the stock of all four companies was also left at the Guaranty Trust Co., of New York City, as collateral security for the three notes given by you, Mr. Libbey, and Mr. Ford, was it not?

Answer. Yes, sir.

Question. Now, where is the stock of the Woodbury Glass Co. now held or owned?

Answer. The Thatcher Manufacturing Co. owns the common stock of the Woodbury Glass Co. excepting the few shares that are put in the names of other people for officers.

Question. So, the Thatcher Manufacturing Co. is really the owner of the common stock of the Woodbury Glass Co.?

Answer. Yes, sir.

Question. The Woodbury Glass Co. has not been dissolved and is in existence to-day?

Answer. It is.

Question. And is also making and selling glass bottles?

Answer. Yes, sir.

Question. But is not making milk bottles?

Answer. Not making milk bottles.

Question. And so it was not dissolved as a corporation?

Answer. No, sir. It was run as a separate corporation.

Question. Now, the Travis Glass Co., the Essex Glass Co., and the Lockport Glass Co. have been dissolved, have they not?

Answer. Yes, sir.

Question. They are no longer in existence?

Answer. No, sir.

Question. Subsequent to the acquisition of the stock in the four companies at the Guaranty Trust Co. on August 28, 1919, did you meet the stockholders who had disposed of their stock?

Answer. Yes, sir; I met those that were there.

Question. You met those that were present?

Answer. Yes, sir.

Question. Now, at that time did you make any statement to them regarding the continuation of the business and the organization of the companies?

Mr. SMITH. May I ask the purpose of that, Colonel?

Mr. BRINDLEY. I understand that after the transaction was completed, Mr. Baldwin went into the stockholders there and had some talk with them and that on that day or some time subsequently—this is what I want to get at—the resignations of the officers and directors of the various companies were made in writing and given to Mr. Baldwin to be exercised at his option.

Mr. SMITH. You just want to bring out the fact of the resignations?

Mr. BRINDLEY. Yes, sir.

Question. I was just going to ask if you met them and made any statement?

Answer. Yes, sir; I did.

Question. And was anything done at that time with reference to the officers of the several companies?

Answer. Their resignations had been transferred with their stock, but they weren't accepted.

Question. The resignations of the officers of the various companies as given to you to be exercised at your option, as I understand the matter; is that correct?

Answer. Yes, sir; that is correct.

Question. Do you know the signature of Mr. H. C. Mandeville?

Answer. I surely do.

Question. Examine that document which I hand you and see if you can identify the signature attached to it?

Answer. I can.

Question. Whose signature is that?

Answer. H. C. Mandeville's.

Question. Identify the document which you hold in your hands and describe it?

Answer. It is dated April 28, 1921. It is a letter to the Federal Trade Commission, Adrian F. Busick, Esq., acting general counsel, Washington, D. C.

Question. And that letter is signed by whom?

Answer. H. C. Mandeville.

Question. Is that Mr. Mandeville's signature to that letter?

Answer. It is.

Question. At the date of that letter what position did Mr. Mandeville occupy with the Thatcher Manufacturing Co.?

Answer. Vice president.

Mr. BRINDLEY. I offer in evidence a letter written at Elmira, N. Y., dated April 28, 1921, addressed to the Federal Trade Commission, Adrian F. Busick, Esq., acting general counsel, Washington, D. C., and signed Thatcher Mfg. Co., H. C. Mandeville, vice president. I offer this as Commission's Exhibit No. 1 to the testimony of the witness Francis E. Baldwin.

Examiner SHEPPARD. Any objection, Mr. Smith?

Mr. SMITH. No objection.

Examiner SHEPPARD. All right, let it be received in evidence.

Mr. BRINDLEY. That will be all for the present, Mr. Examiner.

Mr. SMITH. I have nothing further at this time.

Examiner SHEPPARD. I have nothing further at this time, so we will take an adjournment until 2 o'clock this afternoon.

Now, to wit, 12.40 o'clock p. m. same day, adjourned until 2 o'clock p. m. same day.

ELMIRA, N. Y., *August 15, 1922.*

Met pursuant to adjournment, 2 o'clock p. m.

Before: W. W. Sheppard, examiner.

Appearances: Mr. Smith for the respondent; Mr. Brindley for the commission.

Francis E. Baldwin resumed the stand, and further testified as follows:

Redirect examination.

Mr. SMITH. Mr. Baldwin, you have already testified that to the best of your recollection the notes to the Guaranty Trust Co. were taken up some time during the end of August, 1920?

Answer. Yes, sir.

Question. I show you a check drawn by the Thatcher Manufacturing Co. to the Guaranty Trust Co. dated July 3, 1920, for $1,634,955 and ask you if that refreshes your recollection as to the date when these notes were paid?

Answer. Yes, it does, and I now remember it was paid on the 3d day of July—on Saturday—the day before the 4th, 1920.

Mr. SMITH. That will be all, Mr. Baldwin.

HUBERT C. MANDEVILLE was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination.

Mr. SMITH. Your full name, please?

Answer. Hubert C. Mandeville.

Question. Of Elmira, N. Y.?

Answer. Yes, sir.

Question. Your profession is attorney at law and you are now the vice president and general counsel of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And prior to 1920 you were the general counsel but not the vice president?

Answer. Yes, sir.

Question. You were actively engaged in the general transaction that has been discussed here—of the acquisition of these various companies?

Answer. Yes, sir.

Question. I suppose as actively as anybody except, possibly, Mr. Baldwin?

Answer. Yes, sir.

Question. When you first started this transaction in August, 1919, it was one of the important factors in the proposed plant that the Hartford-Fairmont Co. or its main patent rights should be acquired?

Answer. Mr. Libbey made that a condition.

Question. And if that had been done Mr. Libbey would have remained in the transaction—he would have remained liable on his note and would have been an active party in the transaction?

Answer. Either he or some interest of his.

Question. Possibly the Owens Bottle Co., or something of that sort?

Answer. Yes. I don't know how—it was not discussed.

Question. In other words, the factor of the Hartford-Fairmont patents was extremely important as being the condition, really, of Mr. Libbey's interest in this whole transaction?

Answer. Why, yes, sir, to such an extent that in the beginning he insisted upon both the Hartford-Fairmont patents and the exercise of those options should be one transaction until I pointed out to him that the time was so short that it could not be accomplished. Then he sent his own attorney to see me, with Mr. Ford, and insisted that they should all be done at once and I said that we could not—if it was insisted upon we would have to drop the whole matter. The attorney and Mr. Ford went back and reported, and Mr. Libbey wired me that I could go on with the transaction separately.

Question. You remember, of course, as I remember it, that it took a pretty long series of negotiations to come to a final windup of the Hartford-Fairmont proposed purchase from the time we made the August 28 contract?

Answer. From the time we made the August 28 contract until almost the rest of the year I was in almost constant negotiation with the Hartford-Fairmont officials trying to produce an arrangement by which the Hartford-Fairmont Co.—its patents—could be purchased and did get an agreement—an offer—which was not accepted by Mr. Libbey and his associates.

Question. It was a pretty complex situation to get rid of?

Answer. It was.

Question. Then, when the Hartford-Fairmont proposition fell through and Mr. Libbey resigned it threw the weight—practically all of this very large deal and obligations that had been incurred—upon Mr. Baldwin personally?

Answer. Yes, sir.

Question. And then what was your immediate and most urgent task?

Answer. I had great anxiety and a sense of responsibility that some way must be found for Mr. Baldwin to discharge his obligations.

I had been his advisor when he got into this affair and I must find some way by which he could get out and pay his obligations.

Question. Just to button up one thing—Mr. Baldwin's agreement to assume all the liability as in that contract of August 28, 1919, was, I suppose, put there under his impression that the Hartford-Fairmont deal would probably go through and, therefore, he would not have to assume the liability?

Answer. Well, I do not know what his impression was.

Question. I meant the impression of the whole of them?

Answer. The August 28 contract was drawn so that if we could get it through satisfactorily to Mr. Libbey, it would go through and if it didn't we would have to get it—undertake it ourselves.

Question. He took the chance?

Answer. Yes, Mr. Baldwin took that chance.

Question. You were anxious to get Mr. Baldwin released in some way from this obligation, and what was your course?

Answer. Well, my first course was to find out what the joint assets of the companies, exclusive of the Thatcher, were, with reference to the sort of a financial set-up I could make of the companies exclusive of the Thatcher, with a view of borrowing money on their responsibility.

Question. Your first move left Thatcher out of it entirely?

Answer. Yes, and I had the plan of making a first and second preferred stock and getting Mr. Libbey to take the second preferred, and I made my figures on that plan in the beginning and saw Mr. Libbey about it and he refused to do it. I had a great many plans—I do not know that they are material now—of trying to finance these companies.

Question. Then it seems obvious from what you have said that certainly on August 28, 1919, and from that time to Mr. Libbey's withdrawal and for some time thereafter neither you nor Mr. Baldwin had any sort of assurance or certainty of any sort that the Thatcher Manufacturing Co. could take over this matter or in any way help Mr. Baldwin out.

Answer. Up to Mr. Libbey's withdrawal both Mr. Baldwin and I were following the leadership of Mr. Libbey, believing that he had his own plans, and those plans were discussed—they would be the taking in of the Thatcher company into some other company, and we talked about how the value of the Thatcher Manufacturing Co. should be determined, but nothing came of that. After his withdrawal, then it became our own burden, and Mr. Baldwin and I were in New York quite often together, and I know it was weighing on Mr. Baldwin's mind because of his physical condition, and my mind—I knew myself it was a very serious time for the both of us and a very hard time to finance anything because of the then financial condition.

Question. Had you had any assurance or certainty that the Thatcher company could finance it, would you have had any such anxiety?

Answer. If it is permissible for me to tell the conversations between Mr. Baldwin and myself on that subject, I will be glad to do it.

Examiner SHEPPARD. That is not admissible as testimony, but I will be glad to go on with mutual consent.

Mr. BRINDLEY. All right.

Answer. Mr. Baldwin and I discussed the question of offering these assets of these companies to the Thatcher company, and Mr. Baldwin pointed out that the Thatcher company's stockholders included many women and people who were dependent upon an income from the company and that he had always kept the Thatcher company safe and sound and a reliable investment and that he could not and would not bring any proposition to the Thatcher company until it was in a definite form and could be financed and could be presented so as to be advantageous to the Thatcher company. That was between——

Mr. SMITH. December 11, 1919, and the raising of the final bond issue?

Answer. Yes.

Mr. SMITH. I think I have covered everything I wish to ask. Is there anything you wish to say, Mr. Examiner?

Examiner SHEPPARD. Mr. Mandeville, you have been intimately connected with Mr. Baldwin and with the affairs of the Thatcher Manufacturing Co. for a number of years, haven't you?

Answer. I have been very much of a friend of Mr. Baldwin for many years, but I was not connected with the Thatcher company until a comparatively short time before these negotiations.

Question. How long have you been a stockholder in the company?

Answer. Now, about four years, as I recall it.

Question. So you had nothing to do with the company when it was first organized and started in the business?

Answer. No, sir; but I have since traced all the corporate history of the company and have it here if you wish it.

Question. No. I just want to know how long you have been associated with it. Now, can you tell me and through me the commission if it was Mr. Baldwin's intention to personally acquire as his own interest the assets and physical properties and stock of the Travis, Essex, and the Lockport companies in 1919?

Answer. Well, my answer to that is that the intention was of forming a large company that would include these companies, with the Hartford-Fairmont patents, when the negotiations began.

Question. And he was going to do that—that reorganization of all these companies—by taking over these three companies personally, himself?

Answer. In the beginning, jointly with Mr. Libbey—it was a joint enterprise with Mr. Libbey, Mr. Baldwin, and Mr. Ford was brought in as Mr. Libbey's financial man.

Question. So that the first intention that you personally know such to be was to the extent that the Thatcher Manufacturing Co. was not to have any interest in the acquisition of these three companies?

Answer. No, sir. On the contrary, the proposed large company that was to be formed might afterwards buy the Thatcher.

Question. Now, was it a fact that Mr. Libbey and Mr. Ford failed, or rather elected to take their option to retire under the contract, that the intention was afterward changed to allow the intervention financially of the respondent?

Answer. Well, after the withdrawal of Mr. Ford and Mr. Libbey, Mr. Baldwin had to take it personally or get it in such shape that he

could offer the assets to the Thatcher company. He had to do one thing or the other.

Question. So, it was then that it was determined by the officers and controlling members of the Thatcher Manufacturing Co. to allow the intervention of the respondent to get Mr. Baldwin out of his difficulties; isn't that true?

Answer. It was a forced conclusion.

Mr. SMITH. That conclusion was not come to until you found that you could accomplish this bond issue?

Answer. Yes, sir.

Cross-examination:

Mr. BRINDLEY. How long have you been practicing law, Mr. Mandeville?

Answer. Over 20 years.

Question. You are engaged in the general practice of the law?

Answer. Yes, sir.

Question. You were present at the Guaranty Trust Co. in New York City on August 28, 1919?

Answer. Yes, sir.

Question. Who drew the contract dated August 28, 1919, and signed by Messrs. Baldwin, Libbey, and Ford and the Sterling Glass Co.?

Answer. I drew it, very hastily.

Question. And at that time who was president of the Sterling Glass Co.?

Answer. I was.

Question. And it was as president of the Sterling Glass Co. that you executed the contract for the Sterling Glass Co.?

Answer. Yes, sir.

Question. It was the Sterling Glass Co. that executed it by you as president?

Answer. Yes, sir.

Question. Now, that contract of August 28, 1919, a copy of which is attached to the stipulation as Exhibit G, provided, did it not, that Libbey might withdraw from that transaction although the Hartford-Fairmont properties or patents might be acquired?

Answer. Yes, sir, if the set-up of the new company was not satisfactory to him.

Question. So that Libbey could retire, not only if they did not acquire the Hartford-Fairmont patents or interest, but also if he was not satisfied with the organization?

Answer. Yes, sir.

Question. Now, at New York on August 28, 1919, was anything acquired in addition to the stock of the Travis, Essex, Lockport, and Woodbury companies?

Answer. Yes, sir. A contract was made, I think, directly after we made the contract, Exhibit G, with Mr. Hamilton's representatives. His attorney was there from Pittsburgh and I drew them a contract between the Thatcher company and the J. T. & A. Hamilton Co. providing for the acquisition of the J. T. & A. Hamilton Co.'s license, machine, and milk-bottle business, exclusive of Allegheny County.

Question. Now, the acquiring of the Hamilton patents, etc., was by whom?

Answer. The Thatcher company.

Question. That was a part of the transaction in New York on August 28, 1919, and it was separate and distinct from the transaction between Baldwin, Ford, and Libbey on the notes and stock business?

Answer. Yes, sir.

Question. The acquisition of the Hamilton interest at that time was an acquisition running solely to the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. That was no stock acquisition at all?

Answer. No, sir.

Question. The Hamilton company was simply a glass-bottle manufacturing company which was one of the licensees of the Hartford-Fairmont Co.?

Answer. It had the license for one feeder for milk bottles only.

Question. Do you recall whether or not their right to acquire the Hamilton business and license and machine was included in options or rights held by Mr. Axton?

Answer. Yes, sir; I think he had an option from the J. T. & A. Hamilton Co.

Question. He had an option on that property as he had an option or right in regard to the stock of the four companies?

Answer. Yes, sir.

Question. Please examine the document which I hand you and identify it if you can.

Answer. Yes, sir; marked "Exhibit No. 1" to the testimony of F. E. Baldwin.

Question. And what is that?

Answer. It is a letter written by me to the Federal Trade Commission through its acting counsel, Mr. Busick, in answer to inquiries from the Federal Trade Commission.

Question. You wrote that letter, did you?

Answer. Yes, sir.

Question. The statements made therein were true, according to the best of your knowledge, information, and belief, I assume?

Answer. Yes, sir.

Question. Examine Exhibit H of the stipulation heretofore referred to and identify it for us, if you can.

Answer. Exhibit H is a copy of a letter written by me to Mr. F. E. Baldwin September 2, 1919, on my return from New York after the transactions on August 28 and 29.

Question. And that letter was written by you to Mr. Baldwin, you say?

Answer. Yes, sir.

Question. That is recounting the transactions, or some of them, that occurred at New York City at the time mentioned?

Answer. Yes, sir, putting down on paper my recollection of them while they were fresh in my mind.

Question. And the statements you made in that letter are true, also, are they?

Answer. Yes, sir.

Question. In addition to drawing the contract of April 28, 1919, and executed by Baldwin, Ford, and Libbey and the Sterling Glass Co., did you, as counsel for the Thatcher Manufacturing Co., prepare the various documents attached to the stipulation and executed and signed by the stockholders of the Travis, Essex, Lockport, and Sterling Glass Cos. in reference to the dissolution of those companies and the transfer of their assets to the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And at that time you were a vice president of the Thatcher Manufacturing Co. and its general counsel?

Answer. Yes, sir.

Question. And you were, of course, interested in carrying out the transaction legally and correctly?

Answer. Yes, sir.

Question. And being so interested you prepared these various documents?

Answer. Yes, sir.

Question. Now, you were present, I believe, when the three notes were executed and signed by Baldwin, Ford, and Libbey to the Guaranty Trust Co.?

Answer. Yes, sir.

Question. And you know what disposition was made of the proceeds?

Answer. They were deposited with Guaranty Trust Co., and the Guaranty Trust Co., through its representative, disbursed that money to the individual stockholders of the four companies.

Question. Was any other sum or amount placed with the proceeds of the notes?

Answer. Yes, sir.

Question. What was that?

Answer. $500,000 that had been realized from the sale of capital stock of the Sterling Glass Co.

Question. Now, regardless of your conclusion or mine, the transaction in reference to stock at the Guaranty Trust Co. on August 28, 1919, was simply the acquisition of the stock in the four companies, was it not?

Answer. Yes, sir, except as to the Hamilton.

Question. Except as to the Hamilton, of course?

Answer. Yes, sir.

Question. The capital stock in the Travis, Essex, Lockport, and Woodbury Glass Cos. was on the 28th day of August, 1919, acquired from the then owners of the stock?

Answer. Yes, sir.

Question. And that stock was paid for, as you have described, out of the proceeds of the three notes and the $500,000 of the Sterling Glass Co.?

Answer. Yes, sir.

Question. What disposition, then, was made of the stock when it was assigned or transferred or delivered from the former owners on August 28, 1919?

Answer. The certificates had been indorsed in blank and were retained by the Guaranty Trust Co., of New York, as collateral for the three notes.

Question. Do you know how long the certificates of stock left with the Guaranty Trust Co. on August 28, 1919, remained with the Guaranty Trust Co.?

Answer. They remained there for some time. I do not know—I do not now just recall the date—and then they were sent to the Second National Bank, of Elmira, N. Y., and transfers were made to different individuals nominated by Mr. Baldwin and those individuals again indorsed the stock so the certificates were indorsed in blank and returned to the Guaranty Trust Co. of New York, and remained with them until the notes were finally paid.

Question. Now, the certificates of stock when first given to the Guaranty Trust Co., of New York, as collateral security for the three notes stood in the names of the former owners of the stock?

Answer. Yes, sir.

Question. And remained in that condition until sent to Elmira, where the old certificates were canceled or returned and new certificates in lieu thereof were issued to other persons?

Answer. Yes, sir; the old certificates then were pasted in the stock books.

Question. And are there to-day, I guess?

Answer. Yes, sir.

Question. Now, do you know to whom the stock in these four companies was reissued?

Answer. Yes; I do know. Yes, sir. I could not tell you without looking at the book—I would have to refresh my recollection; as to which company to begin with, have you any preference?

Question. Any one you wish to, sir.

Answer. Refreshing my recollection from the books, the transfers I have mentioned were made about December 1, 1919—not all on the same date—some on December 5, and some on December 6, and some on December 8.

Question. Now, take up any one you may have there.

Answer. I will take the Travis company.

Question. Give us the history of the reissue of that stock.

Answer. There was one share issued to Mr. F. E. Baldwin and one share issued to Mr. Collins, one issued to Mr. Niver, one to Mr. Robinson, and one to Mr. Travis. Four hundred and ninety-five shares were issued to myself. Then, afterwards, I reissued those 495 shares that had been issued to me to Mr. Baldwin. That was on January 5—the second transaction.

Question. Now, after the certificates of stock in the Travis Glass Co. had been sent to Elmira by the Guaranty Trust Co., of New York, all the stock was reissued to the persons you named, was it?

Answer. Of the Travis Glass Co., yes, sir.

Question. Now, the dates of that reissue were when?

Answer. On December 5 all of them except the reissue by myself to Mr. Baldwin of the 495 shares. That was issued on January 5, 1920.

Question. Now, what is the total number of shares reissued here in Elmira to the parties you have named?

Answer. Five hundred shares.

Question. Did that include all of the capital stock of the Travis Glass Co.?

Answer. Yes, sir.

Question. Now, that stock was reissued and returned, as I understand it, to the Guaranty Trust Co., of New York?

Answer. Indorsed in blank ——

Question. By the respective holders?

Answer. Yes, sir.

Question. And returned to the Guaranty Trust Co., of New York?

Answer. Yes, sir.

Question. Then what disposition was made of it?

Answer. It remained there, as I understand it, until the three notes were paid; then it was turned over, as I recall it, to me.

Question. It was first reissued and sent back to the Guaranty Trust Company. How was it held there?

Answer. It remained there as collateral on the three notes.

Question. It simply took the place of the stock that was originally attached to the notes, as collateral security?

Answer. Yes, sir. The stock was so reissued as to qualify some of the old directors and some new directors, in such proportion that if one of the new directors went to the Travis company a meeting of the directors could be held, or if one of the old directors came to Elmira a meeting could be held here, and that same plan was pursued in all the companies.

Question. Now, what money or other consideration was paid by the parties to whom the stock in the Travis company was reissued on the dates you named?

Answer. There was not any.

Question. How many of the persons to whom the stock certificates in the Travis company was issued were officers or employees of the Thatcher Manufacturing Co.?

Answer. Mr. Baldwin, Mr. Niver, Mr. Collins, and myself. That would be four out of seven.

Question. And I believe you have stated that the stock when reissued was returned to the Guaranty Trust Co. and there held as collateral security on the notes until the notes were finally paid by the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. Now take up one other company and detail the history of its stock likewise.

Answer. The next is the Lockport Glass Co., which capital stock was reissued on December 6, 1919, one share to Mr. Baldwin, one share to myself, one share to Mr. Collins, one share to Mr. Niver, one share to Mr. Luce, one share to Mr. Lamb, one share to Mr. Keep, and 1,760 shares to myself, making a total of 1,767 shares.

Question. Did that include all the capital stock of the Lockport Glass Co.?

Answer. All the issued capital stock. I want to correct where I said Mr. Lamb, one share, to Mr. W. E. McComb, one share, instead of Mr. Lamb.

Question. Now, what disposition was made of that reissued stock?

Answer. It was indorsed in blank and returned to the Guaranty Trust Co., of New York, and there remained as collateral security on the three notes until the notes were finally paid.

Question. Now, how many of the persons to whom the stock in the Lockport Glass Co. was reissued, as you have just detailed, were officers, employees, or agents of the Thatcher Manufacturing Co.?

Answer. Four.

Question. Their names being——

Answer. Mr. Baldwin, Mr. Mandeville, Mr. Collins, and Mr. Niver.

Question. What money or other thing of value was paid for that stock when reissued, as you have just recounted?

Answer. None.

Examiner SHEPPARD. Mr. Mandeville, did you subsequently transfer your holding to Mr. Baldwin as you did in the other?

Answer. No, sir.

Mr. BRINDLEY. Now, take the Essex Glass Co.

Answer. The Essex Glass Co. was reissued on December 8, 1919, as follows: One share to Mr. F. E. Baldwin, one share to Mr. R. W. Niver, one share to Mr. F. L. Collins, one share to Mr. R. M. Lamb, one share to Mr. Charles M. Tigner, one share to Watson Pickard, and 994 shares to H. C. Mandeville.

Question. Now, what is the total of the shares of stock reissued as you have recounted?

Answer. One thousand shares.

Question. Did that include all of the stock of the Essex Glass Co.?

Answer. Yes, sir.

Question. What money or other thing of value was paid for the stock so reissued as you have recounted?

Answer. None.

Question. Now, who among those stockholders of the Essex Glass Co. which you have just named were officers, employees, or agents of the Thatcher Manufacturing Co.?

Answer. Mr. Baldwin, Mr. Niver, and Mr. F. L. Collins.

Question. Now, was the stock in the Essex company reissued so as to provide your officers or directors as you detailed in the case of the Travis Glass Co.?

Answer. Yes, sir.

Question. And that plan also was carried out in the case of the Lockport Glass Co.?

Answer. Yes sir, the same plan.

Question. So that you could have a meeting of the board of directors?

Answer. At either place.

Question. At Elmira, N. Y., or at the respective home offices of the companies?

Answer. Yes, sir.

Question. Now, there is one other company involved, I believe—the Woodbury Glass Co.

Answer. The Woodbury Glass Co. books are kept at the office of the Woodbury Glass Co., Winchester, Ind. Perhaps I can find that in my data here.

Question. Was the stock of the Woodbury Glass Co. sent to Elmira by the Guaranty Trust Co., as the stock in the other three companies, for a reissue?

Answer. Yes, sir, the same way.

Question. Tell us, if you can, how the certificates of stock in the Woodbury company were handled.

Answer. I think I can find that memoranda in a moment. I have it here. About the same time—I can not give you the exact date, but it was about the same time as the other transaction. On December 1, 1920, then, the stock of the Woodbury company was so transferred as to stand as follows: F. E. Baldwin, 1,996 shares; George H. Clark, one share; F. L. Collins, one share; L. M. Kimmel, one share; R. W. Niver, one share, making a total of 2,000 shares. I am making this answer in regard to the common stock because the preferred stock belonged to individual holders and was not concerned.

Question. The common stock of the Woodbury company is the only stock having voting powers?

Answer. Yes, sir, under certain conditions.

Question. Did that include all of the common stock of the Woodbury company that you have just recounted?

Answer. Yes, sir.

Question. And who, of the new stockholders to whom the stock in the Woodbury company was reissued, were officers, agents, or employees of the Thatcher Manufacturing Co.?

Answer. Mr. F. E. Baldwin, Mr. F. L. Collins, and Mr. R. W. Niver.

Question. And was stock so reissued in the Woodbury company as to enable you to hold meetings either at the office of the Thatcher Manufacturing Co. or the home office of the Woodbury Glass Co.?

Answer. Yes, sir.

Question. Now, what disposition was made of this stock in the Woodbury Glass Co. when reissued as you have just recounted?

Answer. It was indorsed in blank and returned to the Guaranty Trust Co., of New York, and held by it as collateral for the three notes until they are paid.

Question. Now, the three notes held by the Guaranty Trust Co., of New York, were the original three notes executed by Mr. Baldwin, Mr. Ford, and Mr. Libbey on August 28, 1919?

Answer. That is my recollection; I think so.

Question. And the stock in the four companies when reissued as you have recounted was returned to and held by the Guaranty Trust Co. as collateral security for the payment of those three notes?

Answer. Yes, sir.

Question. And as you say it was so held until the notes were finally paid by the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. I believe that you were present with Mr. Baldwin when the three notes were finally paid on July 3, 1920.

Answer. Yes, sir; on July 3, 1920.

Question. When the notes were paid, what disposition was made of the notes held by the Guaranty Trust Co.?

Answer. Turned over to me as I recall it.

Question. And what did you do with them?

Answer. I brought them back to Elmira.

Question. Now, the three notes and the shares of stock in the four companies were, as you say, delivered to you at New York on July 3, 1920.

Answer. The stock, as I recall it, was delivered to me, but I think the notes were given to Mr. Baldwin.

Question. And you accompanied Mr. Baldwin on that trip when he was closing the matter?

Answer. Yes, sir.

Question. So that there was no money or other thing of value paid by any officer, employee, or agent of the Thatcher Manufacturing Co. for any part of the stock issued to them in the Travis Glass Co., Essex Glass Co., Lockport Glass Co., or the Woodbury Glass Co., was there?

Answer. There was not any stock issued to the Thatcher Manufacturing Co. in any of the companies.

Question. I did not mean to say that. Repeat my question.

(Question repeated.)

Answer. No, sir; I might say here that the different men that held this stock were designated and nominated by Mr. Baldwin.

Question. That explains how it happened to be issued?

Answer. How it happened to be issued to them.

Question. Who prepared the certificate of incorporation of the Sterling Glass Co.?

Answer. I did.

Question. Do you recall the original incorporators of that company?

Answer. Myself, Mr. Waxman of my office, Mr. Personius, and Mr. Rodgers.

Question. Who are Mr. Waxman, Mr. Personius, and Mr. Rodgers?

Answer. Mr. Waxman is a lawyer in our office, Mr. Personius is my partner in the law practice, and Mr. Rodgers is our bookkeeper.

Question. I believe you stated, Mr. Mandeville, you prepared the papers and documents in reference to the transfer of the assets and property of the Travis Glass Co., Essex Glass Co., and Lockport Glass Co. to the Thatcher Manufacturing Co.?

Answer. Yes, sir; I drew the deeds and bills of sale for each one and the resolutions authorizing it.

Question. And did you also prepare the documents in reference to the dissolution of those companies?

Answer. That was done under my direction in my office.

Question. You were aware of the fact that it was being done and saw that it was done properly?

Answer. I was responsible for it.

Question. And the deeds from the various companies to the Thatcher Manufacturing Co. were prepared the same way?

Answer. Yes, sir.

Question. Examine Exhibit P of the stipulation, please.

Answer. Yes, sir.

Question. Can you identify it?

Answer. Yes, sir.

Question. What is it?

Answer. It is a deed from the Sterling Glass Co. to the Thatcher Manufacturing Co. of all its assets.

Question. Exhibit P is a copy of the original deed?

Answer. Yes, sir.

Question. Now, is that instrument executed by the Sterling Glass Co. in conveying all its property, assets, etc., to the Thatcher Manufacturing Co?.

Answer. Yes, sir.

Question. Now, when the Sterling Glass Co. executed and delivered the instrument of which Exhibit P is a copy, did that dispose of all its assets and properties?

Answer. Yes, sir.

Examiner SHEPPARD. What was the consideration in that deed?

Answer. $1 and other good and valuable consideration.

Mr. BRINDLEY. Then what transpired in the Sterling Glass Co. after the deed, of which Exhibit P is a copy, was executed and delivered?

Answer. It was afterwards dissolved.

Question. Now, examine, please, Exhibit V of the stipulation.

Answer. Yes, sir.

Question. Will you tell us if you can identify it?

Answer. It is dated July 25, 1920. I have Exhibit V before me—or a copy of it, rather.

Question. And Exhibit V is a copy of what document?

Answer. It is a bill of sale from the Travis Glass Co. to the Thatcher Manufacturing Co.

Question. What is the date of that instrument?

Answer. July 25, 1920.

Question. Is that the instrument by which the Travis Glass Co. transferred its property, assets, etc., to the Thatcher Manufacturing Co.?

Answer. Its personal assets. I think there was a deed executed for the real estate.

Question. Separate from this?

Answer. I think so.

Examiner SHEPPARD. That was before the thing was paid?

Answer. They were executed and ready for delivery. They took effect on delivery.

Question. What became of the Travis Glass Co. subsequent to its transfer and assignment of its assets to the Thatcher Manufacturing Co.?

Anwer. It was dissolved.

Question. Now, examine, if you please, Exhibit Z-1 of the stipulation and tell us what it is, if you can identify it.

Answer. It is a transfer of the assets of the Essex Glass Co. to the Thatcher Manufacturing Co.

Question. You prepared that original as you did the other originals, also, I believe?

Answer. Yes, sir; this is dated June 17, 1920.

Question. And it was by the instrument of which Exhibit Z-1 to the stipulation is a copy that the Essex Glass Co. transferred the property mentioned therein to the Thatcher Manufacturing Co., was it?

Answer. Yes, sir.

Question. Do you recall whether or not there was any other written instrument transferring anything?

Answer. I think there was. I think there was a separate bill of sale for each one.

Question. What became of the Essex Glass Co. after the transfers of its property to the Thatcher Manufacturing Co.?

Answer. It was dissolved.

Question. Now, examine Exhibit Z–6 to the stipulation and tell us what that is, if you can identify it.

Answer. That is a transfer of the assets of the Lockport Glass Co. to the Thatcher Manufacturing Co., dated June 25, 1920.

Question. Did you prepare the original of which Exhibit Z–6 to the stipulation is a copy?

Answer. Yes, sir.

Question. Do you recall whether or not there was any other instrument conveying any property to the Thatcher Manufacturing Co.?

Answer. Yes; I think there was a deed accompanying—yes. Those deeds were all recorded in the proper clerk's offices in the counties where the real property was situated.

Question. Those deeds were simply to convey the real estate?

Answer. They were in the same terms, practically.

Question. And they were all executed by their respective companies to the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And what became of the Lockport Glass Co. after the transfer of its property to the Thatcher Manufacturing Co.?

Answer. It was dissolved.

Question. So the three of the companies involved in the transaction of August 28, 1919, have been dissolved?

Answer. Yes, sir.

Question. And only the Woodbury Glass Co. is still in existence?

Answer. Yes, sir.

Question. Who owns the common stock of the Woodbury Glass Co. to-day?

Answer. Thatcher Manufacturing Co.

Question. How did it acquire that stock?

Answer. Through the transaction in the Guaranty Trust Co. on August 28, 1919, and the subsequent proceedings.

Question. As heretofore detailed by you and Mr. Baldwin?

Answer. Yes, sir.

Question. Do you know how much the Thatcher Manufacturing Co. gave for the common stock of the Woodbury Glass Co.?

Answer. I think I can tell you through that exhibit——

Examiner SHEPPARD. What was the number of shares?

Answer. Two thousand shares of the common stock of the Woodbury Glass Co. I can not tell you just exactly the amount, but I think it was about $500,000.

Mr. BRINDLEY. To what document are you referring now?

Answer. Exhibit G.

Examiner SHEPPARD. Refer to Exhibit H, Mr. Mandeville, and see if that refreshes your recollection to any extent in reference to the purchase of the Woodbury stock.

Answer. Oh, yes. The check for the Woodbury stock was $434,600 on that day. I think there was some more stock came in later.

Question. A small amount?

Answer. Yes.

Question. Not included in what Mr. Axton delivered to you on August 28?

Answer. Yes. I think that was referred to later in the letter.

Question. Can you now give the total amount there more definitely than you have just stated?

Answer. There was some more stock came in, but the money that was paid over that day was $434,600. The balance was there with Guaranty Trust Co. to take up more stock that was coming in with draft attached.

Question. That was a small amount of stock in the Woodbury Glass Co. which Mr. Axton didn't have in his possession or control on August 28, 1919?

Answer. Yes, sir.

Question. So, the Thatcher Manufacturing Co. paid for the stock in the Woodbury Glass Co. the sum of——

Answer. I can not tell you. About $500,000 I recall it. It was about $500,000. I do not remember the exact amount.

Examiner SHEPPARD. That is close enough.

Mr. BRINDLEY. I believe that is all.

Redirect examination:

Mr. SMITH. You said that Mr. Libbey, under the contract of August 28, 1919, had the right to withdraw not only on the ground of the failure of the Hartford-Fairmont people to come in but if the general set-up was unsatisfactory to him?

Answer. Yes, sir.

Question. Is it not true, however, that the failure of the Hartford-Fairmont plan was the main reason why he withdrew?

Answer. I think it must be because we never got to discussing the set-up of the company at all.

Question. That was what brought the thing to an issue with him, so far as you know?

Answer. Yes, sir.

Examiner SHEPPARD. That is with Mr. Libbey?

Answer. Yes, sir.

Mr. SMITH. And Mr. Libbey would control Mr. Ford?

Answer. Yes, sir.

Question. I am going to ask you a question, Mr. Mandeville, that I should have asked you on the direct. This is in regard to the stock book. Mr. Mandeville, I show you the stock book of the Travis Glass Co. Will you tell me the date of the first share issued?

Answer. August 11, 1908.

Question. Will you be good enough, now, to run through all the shares of stock and see if there are any shares which stood in the name of the Thatcher Manufacturing Co.?

Answer. No, sir.

Question. So the Thatcher Manufacturing Co. was never of record a stockholder of the Travis Glass Co.?

Answer. No, sir.

Question. I show you the stock book of the Essex Glass Co. Will you tell me the date of the first share issued—No. 1 of that company?

Answer. February 20, 1913.

Question. Will you similarly go through that stock book and see if there was any share of stock ever issued to the Thatcher Manufacturing Co.?

Answer. No, sir; there were none.

Question. So the Thatcher Manufacturing Co. was never a stockholder of record of the Essex Glass Co.?

Answer. No, sir.

Question. I show you the stock book of the Lockport Glass Co. Will you tell me the date of the first share issued, No. 100?

Answer. May 16, 1919.

Question. Will you similarly go through that stock book and see if there was any share of stock ever issued to the Thatcher Manufacturing Co.?

Answer. No, sir.

Question. There is no appearance of the Thatcher Manufacturing Co. on that record?

Answer. No, sir.

Question. And the Thatcher Manufacturing Co. was never a stockholder of record of the Lockport Glass Co.?

Answer. No, sir.

Question. I show you the stock book of the Sterling Glass Co. and will ask you to read therefrom the certificate numbers and in each case the number of shares in the said certificate, the date, and the party to whom issued. First give me the certificate number.

Answer. Certificate No. 1, two shares, dated August 23, 1919, to Hubert C. Mandeville. Certificate No. 2, two shares, dated August 23, 1919, to Leo Waxman. Certificate No. 3, two shares, dated August 23, 1919, Ely W. Personius. Certificate No. 4, two shares, dated August 23, 1919, William P. Rodgers. Certificate No. 5, 2,492 shares, dated August 27, 1919, to Thatcher Manufacturing Company. Certificate No. 6, 2,500 shares, dated August 27, 1919, on the face of the certificate, but 1920 on the stub——

Question. The 1920 is a mistake?

Answer. Yes. To Edward D. Libbey and on the bottom of the certificate——

Question. In this case will you read the note about the transfer?

Answer. No. 6 is this note: "Certificate No. 6 canceled June 5, 1920. Certificate No. 7 issued in its place June 5, 1920." Then there is certificate No. 7 for 2,500 shares dated June 4, 1920, to the Thatcher Manufacturing Co., and that is all.

Question. So that certificate No. 7 represents the transfer of the original 2,500 shares held by Mr. Libbey and later taken over by the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. In regard to the mistake on the stub of stock certificate No. 6, where it is said to have been dated August 27, 1920, you said that that was a mistake. Do you know, as a matter of fact, that that was a mistake?

Answer. Yes. Because the original certificate is attached to it and the original certificate is dated 1919 and the stub should correspond with the certificate.

Question. Then you know, as a matter of fact, that that stock was originally issued to Mr. Libbey in 1919?

Answer. Yes, sir.

Question. When you spoke of the result of the transaction on August 28, 1919, as the acquisition of the stocks of the four companies, you didn't mention, did you, that it was an acquisition as record owner of these stocks, but as an equitable title to the stock?

Mr. BRINDLEY. We object to that question as it calls for his conclusion—a legal conclusion at that.

Examiner SHEPPARD. The question is allowed. You may proceed.

Answer. No, I did not consider it acquisition in the sense of the record ownership or anything more than is termed by the definition in the contract of August 28. That is a matter of argument.

Examiner SHEPPARD. Mr. Mandeville, just one question. When this Thatcher Manufacturing Co., through its bond issue, obtained the money to take up these notes and collateral held by the Guaranty Trust Co. and which you and Mr. Baldwin accomplished on July 3, 1920, the collateral and the notes were handed to you—delivered to you—by the bank, weren't they?

Answer. To Mr. Baldwin and myself: yes, sir.

Question. And the notes paid and the collateral paid which had been taken up by the Thatcher Manufacturing Co. through its money was the property of the respondent, wasn't it?

Answer. Yes, sir.

Question. Did the bank make any assignment at all to the Thatcher Manufacturing Co. of the collateral and notes?

Answer. No, sir.

Question. It did not?

Answer. No, sir.

Question. It just marked them paid?

Answer. It marked the notes paid and handed them over with the collateral. We receipted for it.

Mr. BRINDLEY. Mr. Mandeville, this stock book of the Sterling Glass Co. shows, as you have already recited, that certificate No. 7 for 2,500 shares of the capital stock was issued June 4, 1920, to the Thatcher Manufacturing Co., of Elmira, N. Y.?

Answer. Yes, sir.

Question. That certificate No. 7 to take the place of the stock issued soon after the acquisition of the Sterling Glass Co. to Mr. E. D. Libbey?

Answer. Yes, sir.

Question. And from and after June 4, 1920, the Thatcher Manufacturing Co. owned all the capital stock of the Sterling Glass Co. except the eight shares belonging to you, Mr. Waxman, Mr. Personius, and Mr. Rodgers?

Answer. Yes, sir; it really owned all of it.

Question. Going back for a moment to the transaction at the Guaranty Trust Co. in New York, when you and Mr. Baldwin paid the three notes held by the Guaranty Trust Co., did you have any meeting that day with the bond buyers?

Answer. With their attorneys.

Question. With their attorneys?

Answer. Yes, sir.

Question. Now, were they present during this transaction?

Answer. They went over with Mr. Baldwin and myself to the Guaranty Trust Co. and stayed until after the money was paid over and I do not remember whether they [*remained*] until we got our notes and collateral back or not.

Question. Where did you and Mr. Baldwin get the money that day with which you paid the Guaranty Trust Co.?

Answer. The money was turned over by the bankers to their attorney.

Question. Who were the bankers?

Answer. Hemphill, Noyes & Co. and Bonbright & Co.

Question. They were the bond buyers?

Answer. Yes, sir.

Question. They were the persons who made the contract with Mr. Baldwin in reference to the bond issue?

Answer. Yes, sir.

Question. And they took the bond issue?

Answer. Yes, sir.

Question. The proceeds of that bond issue were turned over to you and Mr. Baldwin at the Guaranty Trust Co. that day?

Answer. Yes, sir.

Question. And from it you paid——

Answer. We deposited it with Guaranty Trust Co. and drew a check——

Question. The check you drew on that fund was the check mentioned heretofore by Mr. Baldwin dated July 3, 1920?

Answer. It is here now.

Question. The fact of the matter is that the transaction between you and Mr. Baldwin, one representing the Thatcher Manufacturing Co. and the bond buyers, was practically simultaneous with the transaction of paying the notes with the Guaranty Trust Co.?

Answer. Yes. In fact, we delivered the mortgage then.

Question. It was done around the same table?

Answer. Yes, sir.

Question. And that closed the transaction which was instituted or begun on August 28, 1919, so far as the Guaranty Trust Co. was concerned?

Answer. Well, that transaction was not instituted then; it was the sequel to that.

Question. You say the payment by you and Mr. Baldwin to the Guaranty Trust Co. closed the transaction instituted with the Guaranty Trust Co. on August 28, 1919, when the three notes were made and the money originally borrowed?

Answer. Yes, yes.

FRANCIS E. BALDWIN, having previously been sworn, was thereupon recalled and testified on behalf of the respondent as follows:

Redirect examination:

Mr. SMITH. Can you give me, Mr. Baldwin, the Thatcher Manufacturing Co.'s production, in figures, for the year 1921 and for the first six months of 1922?

Answer. For the year 1921 we manufactured 821,750 gross. For the first six months of 1922, 384,199 gross.

Mr. SMITH. That will be all, Mr. Baldwin.

COMMISSION'S TESTIMONY.

FRANK L. COLLINS was thereupon called and duly sworn, and testified on behalf of the commission as follows:

Direct examination:

Mr. BRINDLEY. Please state your name, residence, and occupation?

Answer. Frank L. Collins, Elmira, N. Y. With the Thatcher Manufacturing Co.

Question. What is your official connection with the Thatcher Manufacturing Co.?

Answer. I haven't any position; I am just employed by them.

Examiner SHEPPARD. As what?

Answer. I have charge of the office.

Mr. BRINDLEY. You are familiar with the books and records and papers and documents of the Thatcher Manufacturing Co., are you?

Answer. Yes, sir.

Question. They fall under your immediate supervision?

Answer. Yes, sir.

Question. Mr. Collins, there is in evidence in this proceeding a document attached to the stipulation marked "Exhibit K," and it is admitted that that is a true copy of the annual report to the directors and stockholders of the Thatcher Manufacturing Co. made by Francis E. Baldwin, the president of the Thatcher Manufacturing Co., and it is dated February 18, 1920. Now, in it I find an expression which I wish you to explain. It is this: "At the time of the report we had advanced to the Travis Glass Co., the Woodbury Glass Co., and the Sterling Glass Co., $103,249.60. We received from the Essex Glass Co., $75,000, leaving a balance of $28,249.60. We made a further advance January 2 of $100,000 to the Sterling Glass Co." Can you explain to me those figures and that statement from the report?

Answer. The $103,249.60 represented advances to the Travis Glass Co. of $25,000 and to the Woodbury Glass Co. of $40,625 and to the Sterling Glass Co. $37,827.17 less $182.57. That $37,827.17 was made up of miscellaneous expenses, in traveling expense and things of that kind that came up in connection with this work, and the $182.57 credit is from amounts returned by different ones—the moneys left from their traveling expenses. Now, that $182.57 taken out gave you the $103,249.60, the amount mentioned in the report.

Question. What were the dates when the money aggregating $103,249.60 was advanced by the Thatcher Manufacturing Co.?

Answer. Well, to the Sterling Glass Co., the first advance, or the first charge, is August 27, 1919, and that represents charges to that company up to and including December 31, 1919. That was advanced as expenses for the Sterling Glass Co. To the Travis Glass Co., that represents a cash advance on October 27, 1919, of $25,000. To the Woodbury Glass Co., advances during the month of September, 1919, of $40,605.

Question. This statement in the annual report of Mr. Baldwin's says: "We received from the Essex Glass Co. $75,000, leaving a balance of $28,249.60." Can you explain that $75,000 proposition received from the Essex Glass Co.?

Answer. We had the Essex Glass Co.'s check for $75,000 on December 31, 1919.

Question. That is the item referred to in this report?

Answer. Yes, sir.

Question. What became of that $75,000?

Answer. It was credited to the Essex Glass Co.

Question. What did Thatcher Manufacturing Co. do with it?

Answer. Deposited to their account.

Question. And became a part of the Thatcher funds?

Answer. And became part of the Thatcher funds advanced by the Essex.

Question. I presume you mean received from the Essex?

Answer. Received from the Essex.

Question. In other words, it was simply $75,000 received from the Essex Glass Co. and delivered to the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And became part of the funds and assets of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. What was the date that was received, that $75,000?

Answer. December 31.

Question. Now, in his report dated February 18, 1920, Mr. Baldwin says: "We invested from our earnings $150,000 in the stock of the Sterling Glass Co. and have a note outstanding for $100,000 for the balance of our investment of $250,000 in that company." Can you explain that statement?

Answer. We borrowed $100,000 and took credit for it and drew our check for the $250,000.

Question. As a matter of fact, you actually paid the Sterling Glass Co. $250,000?

Answer. Yes, sir.

Question. $150,000 of that you had in cash and you borrowed the other $100,000?

Answer. That is all there is to it; yes, sir.

Question. Have you certain canceled checks of the Thatcher Manufacturing Co. there?

Answer. Yes, sir.

Question. Just describe them so that the reporter can take them in his notes.

Answer. Check dated August 23, 1919, to the Sterling Glass Co., $250,000, issued by Thatcher Manufacturing Co.

Question. Is that a canceled check?

Answer. Yes, sir.

Question. And what does it represent?

Answer. That represents the $250,000 for the purchase of the Sterling Glass Co.'s stock. Check dated June 7, 1920, on the second National Bank, of Elmira, for $261,750, drawn by Thatcher Manufacturing Co. to take up the Libbey stock of the Sterling Glass Co. of $250,000 and interest to that date of $11,750.

Question. The total sum then paid Mr. Libbey being——

Answer. $261,750.

Question. That was for the purchase of his stock in the Sterling Glass Co.?

Answer. Yes, sir.

Question. And included the interest, as you have detailed?

Answer. Yes, sir.

Question. Now, what other canceled checks have you there with you?

Answer. Check dated July 3, 1920, payable to the order of the Guaranty Trust Co., drawn on the Guaranty Trust Co., by Thatcher Manufacturing Co. for $1,634,955.

Question. What does that check represent?

Answer. That check was used to take up the charge to the Thatcher account by the Guaranty Trust Co. under date of July 3, for the same amount and was to cover, according to our records, the payment of the notes made by Baldwin, Ford, and Libbey.

Mr. Brindley. Mr. Collins, in Exhibit S to the stipulation in evidence in this cause, I see a notice addressed to the Travis Glass Co. and the board of directors thereof, which recites that the parties whose names are signed thereto have acquired all the shares of the capital stock of the Travis Glass Co., and among the names signed to that document I see the name of F. L. Collins. Is that F. L. Collins yourself?

Answer. Yes, sir.

Question. Did you ever own any stock in the Travis Glass Co.?

Answer. I had stock in my name.

Question. What did you pay for it?

Answer. Not anything.

Question. I see that in Exhibit X to the stipulation it recites that your are a stockholder of the Essex Glass Co., and your name is signed to that notice. How did you acquire stock in the Essex Glass Co.?

Answer. In the same way as in the Travis.

Question. You didn't pay anything for it?

Answer. I did not pay anything for it.

Question. And in Exhibit Z–3 to the stipulation in a notice addressed to the Lockport Glass Co. I see it is recited that you are a stockholder in the Lockport Glass Co., your name being signed to that notice. Did you own any stock in that company?

Answer. In the same way that I did in the other two. I did not pay anything for it.

Mr. Brindley. That is all, Mr. Collins.

Examiner Sheppard. None of the stock was ever delivered to you, was it?

Answer. Only for signing in blank.

Question. I mean that stock that you are purported to have owned?

Answer. No, sir.

Question. Mr. Collins, you have been with the Thatcher Manufacturing Co. for a number of years, haven't you?

Answer. Yes, sir.

Question. And you are familiar with all their business, more or less, in detail, are you not?

Answer. To a large extent, yes.

Question. You have testified that the Thatcher Manufacturing Co. made certain advances in cash to the Travis Glass Co. and the Woodbury Glass Co., the first on October 27, 1919, and the second in September, 1919. Was it your understanding at that time that either of these companies was owned or operated by the Thatcher Manufacturing Co.?

Answer. No, sir.

Question. Was that indebtedness evidenced by note in favor of the Thatcher Manufacturing Co.?

Answer. No, sir; it was not.

Question. In what way were these advances made?

Answer. They were made as loans and carried on our accounts on an open charge against these companies.

Question. In other words, you sent the checks to these companies?

Answer. We sent the checks to them.

Question. Payable to the companies, respectively.

Answer. Payable to the companies; yes, sir.

Question. Were the same set of circumstances relative to the advance made to the Sterling Glass Co. on August 27, 1919?

Answer. To the Sterling Glass Co. That was for miscellaneous expenses that came in that we paid for the Sterling—that is, charges on the Sterling running from August 27, 1919, up to January 1, 1920.

Question. Now, you have testified that the Thatcher Manufacturing Co. received from the Essex Glass Co. on December 31, 1919, an amount of $75,000. For what purpose was that?

Answer. It was an advance in funds from the Essex to us.

Question. It was to take up any note or evidence of credit?

Answer. No. There is a law in the State of Ohio on bank balances on January 1.

Question. I would like to have you explain how the transfer by the Essex company—this Essex Glass Co., to the Thatcher Manufacturing Co.—could affect any bank balance in the State of Ohio?

Answer. It reduced the Essex balance in the State there.

Question. Therefore, this payment by the Essex company to the Thatcher company was not to take up any indebtedness?

Answer. No; it was not to take up any indebtedness.

Examiner SHEPPARD. That is all.

Examiner SHEPPARD. Gentlemen, I am open to suggestions as to future proceedings in this case.

Mr. SMITH. We rest, Mr. Examiner, unless it is desired to take further testimony.

Mr. BRINDLEY. It is hereby stipulated and agreed by the attorney for the Federal Trade Commission and the attorney for the respondent before the examiner of the Federal Trade Commission in this proceeding that the following statement of facts is true and may be taken and considered by the Federal Trade Commission in this proceeding in lieu of testimony, viz:

That the allegations in paragraph 3 of the amended complaint issued in this proceeding on July 18, 1922, are true as alleged in said paragraph 3.

That the allegations of paragraph 4 of said amended complaint are true as alleged in said paragraph 4 of said amended compliant, except that the Thatcher Manufacturing Co. does not now own the

exclusive right to all improvements that may be made on the Owens bottle-blowing machine and to any new machines that the Owens Bottle Co. may own or acquire, said right to said improvements and said new machines having terminated October 1, 1920.

Examiner SHEPPARD. We will adjourn further hearing in this cause until the call of the examiner.

Now, to wit, 4 o'clock p. m., same day, hearing adjourned until the further call of the examiner.

ORDER APPOINTING SUBSTITUTE EXAMINER.

(Dated October 25, 1922.)

UNITED STATES OF AMERICA.

Before Federal Trade Commission, ss:

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 25th day of October, A. D. 1922.

Present: Nelson B. Gaskill, chairman; Victor Murdock, John F. Nugent, Huston Thompson, Vernon W. Van Fleet, commissioners.

FEDERAL TRADE COMMISSION vs. THATCHER MANUFACTURING COMPANY.	Docket No. 738. Order appointing substitute examiner.

Whereas William W. Sheppard, an examiner of this commission, was heretofore, to wit, on August 14, 1922, duly appointed and designated to receive and hear testimony and take evidence in the above-entitled proceeding; and

Whereas said William W. Sheppard is unable, by reason of another assignment, to sit further as an examiner in this case.

It is therefore hereby ordered that Edward M. Averill, an examiner of this commission, be, and he is hereby, designated an appointed to receive and hear testimony and take evidence in said proceeding.

By direction of the commission:

[SEAL.] (Signed) OTIS B. JOHNSON,
Secretary.

BEFORE THE FEDERAL TRADE COMMISSION.

FEDERAL TRADE COMMISSION v. THATCHER MANUFACTURING COMPANY.	Docket No. 738.

NEW YORK, N. Y.,
November 3, 1922—10 o'clock, a. m.

Met pursuant to notice.

Before E. M. Averill, Esq., examiner.

Appearances: A. R. Brindley, Esq. (Washington, D. C.), for the Federal Trade Commission; Herbert Knox Smith, Esq., Hartford, Conn., for the respondent.

Mr. BRINDLEY. Before proceeding with the examination of a witness, I want to add to the record a direct statement in reference to an

agreement made at the hearing at Elmira. Mr. Smith, by referring to pages 173 and 174 of the transcript of the testimony taken at Elmira, N. Y., on August 14 and 15, 1922, you will observe a statement made by me in reference to an agreement in which it is recited that it is agreed that the allegations in paragraphs 3 and 4 of the amended complaint are true, with the exception noted on page 174. That agreement was made before the examiner by the attorney and assented to by the attorney for the respondent, but that assent does not appear in the record.

Mr. SMITH. I assent and concur in that stipulation.

Mr. BRINDLEY. That stipulation was made for the purpose of avoiding the necessity of taking testimony to prove the allegations of paragraphs 3 and 4 of the amended complaint, and is admitted, as stated, with the exception noted on page 174.

I. T. AXTON was thereupon called as a witness, and being first duly sworn, testified as follows:

Direct examination by Mr. BRINDLEY:

Question. Please state your name, residence, and occupation.

Answer. I. T. Axton, Louisville, Ky., adviser to corporations.

Question. How long have you resided at Louisville, Ky?

Answer. About 20 years.

Question. Were you residing at Louisville during the years 1918 and 1919?

Answer. I was.

Question. In what business were you then engaged?

Answer. Bottle jobbing business and also stockholder in Woodbury Glass Co. part of that time.

Question. When did you first become interested in the Woodbury Glass Co.?

Answer. Either the latter part of 1918 or the early part of 1919.

Question. Where was the Woodbury Glass Co. located and doing business?

Answer. Winchester, Ind.

Question. And was it a corporation?

Answer. It was.

Question. To what extent did you first become interested in the Woodbury Glass Co.?

Answer. I bought $60,000 worth of the common stock.

Question. What was the amount of the common stock of the Woodbury Glass Co.?

Answer. $200,000.

Question. Did you subsequently acquire any additional stock?

Answer. Yes, sir.

Question. What part of the stock did you subsequently acquire?

Answer. My total holdings amounted to about 852 shares, par value $100.

Question. What was the total capital stock of the Woodbury Glass Co. at that time?

Answer. $200,000 common, and I think the authorized preferred was $300,000, but I can not just state how much had been issued. I think it was about $222,000.

Question. Of the preferred?

Answer. Yes.

Question. When were you first elected president of the Woodbury Glass Co.?

Answer. In the early part of 1919.

Answer. And how long did you continue in that capacity?

Answer. Until August 29, 1919.

Question. During the time that you were president of the Woodbury Glass Co., what, if any, offers or negotiations did you make for extending that company's business or consolidating or merging it with some other concern?

Answer. You refer to the merging or just to the general conduct of the business towards extending the business?

Question. Not necessarily the conduct of that particular business, but what efforts, if any, were made in reference to a merger with other concerns?

Answer. I procured options on the common stock of various concerns and tried to form a merger of these with the Woodbury and finance here in New York, but it was unsuccessful.

Question. Do you recall about what time you began that effort?

Answer. In May of 1919.

Question. And in furtherance of that effort, what did you secure?

Answer. I secured options on the stock of the various companies.

Question. What companies?

Answer. The Essex Glass Co., Lockport Glass Co., Travis Glass Co., and the rights of the J. T. & A. Hamilton on the machine of the Hartford-Fairmont Co. to make milk bottles.

Question. So that in May, 1919, you were president and the majority stockholders of the Woodbury Glass Co.?

Answer. No; I was not majority stockholder.

Question. You were then president of the Woodbury Glass Co.?

Answer. Yes.

Question. And had acquired options on the common stock of the Travis Glass Co., the Essex Glass Co., the Lockport Glass Co., and an option on certain rights and privileges of business of the Hamilton Co.?

Answer. We secured the option on that machine and all that went with it, the rights of Hamilton's machine.

Question. And the option on the stock of the other companies named?

Answer. Yes, sir.

Question. And in securing those options, what did you do?

Answer. I tried to form the merger and have it financed.

Question. What was the result of your effort?

Answer. I wasn't able to do so because the various stockholders would not agree to certain modifications in the options which the bankers thought necessary.

Question. And so you ascertained that you would not be able to carry through the merger of the companies as you contemplated?

Answer. I was afraid I would not.

Question. When did you reach that conclusion?

Answer. I think it was in July, 1919.

Question. Then what did you do in reference to the stock of the companies which you controlled?

Answer. I went to Mr. F. E. Baldwin, president of the Thatcher Manufacturing Co., and suggested that the Thatcher or he or his associates exercise those options.

Question. What did you disclose to Mr. Baldwin that you held?

Answer. I showed him the options I had.

Question. On what?

Answer. On those various companies, on the stock of these various companies.

Question. What was the result of your interview with Mr. Baldwin?

Answer. At first he did not seem to be interested, but later he told me he was, and got the money together and the stock was sold.

Question. What stock was sold?

Answer. Of the various companies that I had options on, also the common stock of the Woodbury Glass Co.

Question. Where was that transaction in reference to the sale of stock consummated?

Answer. Guarantee Trust Co., New York.

Question. Do you recall the date?

Answer. August 29, 1919.

Question. What was the transaction which took place in the office of the Guarantee Trust Co. of New York City, on the date you mention?

Answer. The stock of the various companies was turned over to the representatives of the Guarantee Trust Co., who issued checks for the amount specified in my options.

Question. In other words, the stock in the various companies you have named was there delivered and the money in payment therefor paid to the respective owners or holders of the stock?

Answer. Or representatives; yes, sir.

Question. How long do you say you were connected with the Woodbury Glass Company?

Answer. As a stockholder I would say about a year. I want to make a statement back there where you asked me when I was president and I said the early part of 1919. It might have been the latter part of 1918.

Question. In what business was the Woodbury Glass Co. engaged?

Answer. They were manufacturing bottles, jars, and so forth.

Question. How many plants or factories did it own?

Answer. One.

Question. Where was it located?

Answer. Winchester, Ind.

Question. And what business was it engaged in in addition to manufacturing bottles and jars?

Answer. We made some boxes. We had a box plant in connection with the bottle factory.

Question. What disposition was made of the glass bottles and jars which the Woodbury company manufactured?

Answer. They were sold.

Question. How?

Answer. Through sales representatives, and officers of the company sometimes sold them, too.

Question. Where were your customers generally located?

Answer. The whisky customers, mostly in Kentucky. Then we had trade with packing houses in Chicago and other points.

Question. In what different States did the Woodbury Glass Co. sell its product?

Answer. Principally in the Middle West.

Question. Will you name some of the States?

Answer. Illinois, Indiana, Kentucky, Ohio.

Question. So the Woodbury Glass Co. manufactured glass bottles in Indiana and glass jars in Indiana?

Answer. Yes, sir.

Question. And shipped them into various other States?

Answer. Yes, sir.

Question. To purchasers located in various other States?

Answer. That is right.

Question. Was it in competition with any other concerns or persons engaged in a similar business?

Answer. Oh, yes.

Question. Can you name approximately the annual output of glass bottles or glassware manufactured by the Woodbury Glass Co. at the time you were its president?

Answer. You mean in dollars and cents?

Question. Yes; or in bulk output of bottles.

Answer. I would say about from a million and a half dollars to two million dollars annually.

Question. And what kind or class of glass bottles or glassware did that output include?

Answer. It included what was known as condiment ware, whisky bottles, and some milk bottles. At that time I do not know whether they were making whisky bottles or what. I think that was about at an end, but that used to be the big business of the Woodbury Glass Co.

Question. The manufacture of whisky bottles?

Answer. Whisky bottles and boxes.

Question. At the time you were connected with it, that class of business was somewhat on a decline, I believe.

Answer. Right up to the time when prohibition went into effect, and then it had a wonderful revival.

Question. After prohibition went into effect?

Answer. No; just before. We could not supply them fast enough, and afterwards too there was a bigger panic after prohibition went into effect than before—a bigger panic in the scarcity of whisky bottles.

Question. By what method did the Woodbury Glass Co. manufacture bottles?

Answer. Semiautomatic machines—Lynch machines.

Question. What is the name of the machine you just mentioned?

Answer. The Lynch. We had not got to making them on the Hartford-Fairmont when I sold my stock, but we were getting ready to.

Question. What connection, or relation, if any, did the Woodbury Glass Co. have to the Hartford-Fairmont Co.?

Answer. They had a contract for certain rights—a limited contract to manufacture condiment ware.

Question. On what?

Answer. On the Hartford-Fairmont feeders.

Question. What is the Hartford-Fairmont feeder?

Answer. There is a certain device for getting the glass out of the tank and into the molds.

Question. Is it a modern, successful, automatic machine for the manufacture of bottles?

Answer. It is a modern, automatic, successful feeder. We did not have any of their machines.

Question. But the Woodbury Glass Co. had a contract with the Hartford-Fairmont Co. for the use of certain machines for certain purposes?

Answer. Yes, sir.

Question. And what was the purpose for which the Woodbury company had the right to use the Hartford-Fairmont machine or feeder, which ever you call it?

Answer. You mean by that what class of bottles or jars?

Question. And the extent of its right? Just describe, so we can get it in the record.

Answer. We had a limited contract for the use of the Hartford-Fairmont feeders in the making of condiment ware, polished bottles. That was the big end of it. It might have covered something else.

Question. Have you a copy of that contract with you?

Answer. I have not; that was the property of the company.

Question. And remained with it?

Answer. Yes.

Question. After you severed your connection with the company?

Answer. Yes, sir.

Question. I believe you say that the Woodbury Glass Co. had not begun the use of the Hartford-Fairmont machine or feeder?

Answer. They were just getting ready to use it. They might have used it a little before it was sold or a little afterwards, but not in any great way.

Question. So during your connection with the Woodbury Glass Co. it manufactured glass bottles and glassware by processes different from the Hartford-Fairmont process?

Answer. That is right, with the exceptions I stated. We might have been making it the last month. I was not around the factory a great deal then.

Question. I believe you stated that the Woodbury Glass Co., in the manufacture of bottles and glassware, manufactured milk bottles also.

Answer. Yes, sir; in a limited way.

Question. What disposition was made of the milk bottles manufactured by the Woodbury Glass Co.?

Answer. They were sold to consumers and jobbers and the regular trade that buys milk bottles.

Question. In what section or territory?

Answer. The Middle West. About the same States as I have named before where Woodbury did its business.

Question. In States other than the State in which the milk bottles were manufactured?

Answer. And in the State where they were manufactured.

Question. What concerns other than the Woodbury Glass Co. sold milk bottles in the territory in which the Woodbury Glass Co. sold milk bottles?

Answer. I do not know.

Question. Do you know of any?

Answer. I presume that most of the leading factories where the freight did not prohibit sold in that territory.

Question. Can you name any glass bottle manufacturing concern which sold milk bottles in the territory occupied by the Woodbury Glass Co.?

Answer. Not to my personal knowledge. I would just infer, as I say, that most any of them, but I do not know.

Question. You stated, I believe, that you were present at the office of the Guaranty Trust Co. in New York City in August, 1919, when the stock in the Woodbury, Travis, Lockport, and Essex Glass companies was acquired by the purchasers on that occasion?

Answer. Yes, sir.

Question. Do you recall whether, during that sale or shortly preceding it, there was any discussion between you and the representatives of the Guaranty Trust Co. or of the Thatcher Manufacturing Co. in reference to the business in which the Woodbury Glass Co. was engaged?

Answer. There may have been as indicated by that letter.

Question. Examine document which I hand you and see if you can identify it [handing paper to witness].

Answer. I do, with the exception that this is dated August 28, 1921. The original was August 28, 1919. That error was made by my stenographer when she mas making a copy for you, when you were in Louisville, which was done the latter part of 1921, and she made the error of writing the current year instead of the year that was on the letter.

Question. Having examined the document which you hold in your hand, does it refresh your recollection to any extent as to its contents and authorship?

Answer. It does.

Question. What is the document you have just examined?

Answer. A letter to the Guaranty Trust Co. stating the nature of the Woodbury Glass Co.'s business and that of the Travis Glass Co.

Question. Is that document you hold in your hand the original letter?

Answer. Copy of the original.

Question. That letter was written by whom?

Answer. I. T. Axton.

Question. By yourself?

Answer. Yes, sir.

Question. Where was it written?

Answer. I think in the office of the Guaranty Trust Co., August 28, would be about the time.

Question. Of what year?

Answer. 1919.

Question. And is the document you hold in your hand a correct copy of the letter with the exception of the date?

Answer. I think it is.

Question. What should be the correct date of that copy?

Answer. August 28, 1919.

Question. And the copy you hold in your hand shows what date?

Answer. August 28, 1921: merely a typographical error on the part of my stenographer.

Question. Do you recall who was present when you dictated that letter?

Answer. I do not.

Question. Having examined the copy which you hold in your hand, do you recall whether or not you had any conversation with Mr. Baldwin or Mr. Mandeville in reference to the business of the Woodbury Glass Co., as stated in the letter written by you to the Guaranty Trust Co.?

Answer. I do not.

Question. Did you have any conversation prior to the date of that letter at Elmira or at any other place?

Answer. I do not recall it.

Question. When did you retire from the position of president of the Woodbury Glass Co.?

Answer. When I sold my stock.

Question. And that was?

Answer. August 29, 1919. I do not want to be too specific. It might have been August 28. We were there two days.

Question. It was either August 28 or August 29?

Answer. Yes, sir.

Question. Of 1919?

Answer. That is right.

Question. Who assumed or took over the management of the Woodbury Glass Co. after you retired?

Answer. The management remained about the same; the same management we had before.

Question. So far as the personnel is concerned, you mean?

Answer. Yes. But I understood the Thatcher Manufacturing Co. took over the management.

Question. After the sale of stock in the Woodbury Glass Co. in August, 1919, what effect, if any, was there on the competition then existing or theretofore existing between the Woodbury Glass Co. and the Travis Glass Co. or the Essex Glass Co. or the Lockport Glass Co.?

Answer. I do not know.

Question. Do you know in what sections of the United States the Travis Glass Co. and the Essex Glass Co. and the Lockport Glass Co. sold and disposed of their products?

Answer. No, sir; except by hearsay.

Question. So far as your own knowledge goes, then you do not know whether they were competing with the Woodbury Glass Co. or not?

Answer. I do not think they were competing with Woodbury; they might have been in some cases, but we were small factories in the milk bottle business.

Question. The extent of the competition, if any, was then unknown to you. Is that true?

Answer. Was then unknown to me? It is unknown to me now. I might have known then, being in the business, more than I can recall now.

Question. The letter written by you on August 28, 1919, to the Guaranty Trust Co. of New York, a copy of which you have just identified, was written by you in connection with the sale of stock in the Woodbury, Travis, Essex, and Lockport Glass Cos., was it not?

Answer. Yes, sir.

Question. And that was written at the time or shortly before the acquisition of the stock in the four companies was consummated?

Answer. Yes, sir.

Question. Is the document you hold in your hand a correct copy of the letter written by you on the date you have named?

Answer. I think it is.

Question. And the statements therein made by you were true, were they not?

Answer. Yes, sir; to the best of my knowledge and belief at that time.

Question. You at least thought they were true when you were writing the letter?

Answer. Absolutely.

Question. And you know of no reason why you should question the correctness of those statements, at this time, do you?

Answer. None whatever.

Mr. BRINDLEY. I will now offer in evidence the document identified by the witness, Mr. Axton, as a copy of the letter written by him on August 28, 1919, to the Guaranty Trust Co. of New York, and will call attention at this time to the fact that the copy now offered in evidence bears date of August 28, 1921, and that date has been explained by the witness.

Examiner AVERILL. Any objection, Mr. Smith?

Mr. SMITH. No.

Mr. BRINDLEY. I ask that it be received in evidence and marked as an exhibit to the testimony of Mr. I. T. Axton.

Examiner AVERILL. The document will be received and marked "Commission's Exhibit No. 2."

(The paper was received in evidence and marked "Commission's Exhibit No. 2.")

By Mr. BRINDLEY:

Question. Mr. Axton, the transaction in reference to the acquisition of the stock in the four companies was consummated, you say, at the office of the Guaranty Trust Co. of New York, in August, 1919?

Answer. That is correct.

Question. What did you do, if anything, with reference to assembling the owners or the representatives of the owners of the stock in the four companies at the office of the Guaranty Trust Co.?

Answer. I wired them to meet me in New York and I took them down there.

Question. An had them present at the office of the Guaranty Trust Co.?

Answer. Yes, sir.

Question. Do you remember where you were assembled?

Answer. I think they called it the board room.

Question. And who was present in that board room?

Answer. The various owners or representatives of the owners of the common stock of these companies and representatives of the Guaranty Trust Co. and myself and Mr. George H. Clark.

Question. Was any representative of the Thatcher Manufacturing Co. present before the stock was transferred or delivered?

Answer. No, sir.

Question. How many persons among the stockholders or their representatives whom you had assembled knew to whom the stock was to be sold or transferred beside yourself.

Answer. I think there were two—Mr. George H. Clark and Mr. William Lucking.

Question. How about the remainder of the stockholders or representatives?

Answer. They did not know to a certainty but some of them talked very much like they knew. They seemed to know what was going on or had a very strong suspicion.

Question. As you had options on the stock, you simply requested them to meet you at that place for completing the transaction.

Answer. My option read two ways, one all cash, and one part cash, and securities. I fell down in not being able to modify the part cash and part securities. That gave me a right to buy for all cash, no matter who the purchaser was.

Question. And so far as you were concerned, you did nothing to disclose that you were not the actual purchaser of the stock. You were simply completing a deal?

Answer. Yes; and if we were paying a man all cash, it was not any of his business either who was going to buy.

Question. After that meeting of the stockholders——

Answer. May I say one thing about those who were present? It was not because Mr. Baldwin did not want to be; in fact, it was at my suggestion that he was not there.

Question. I do not mean to intimate that there is anything wrong in the failure to actually disclose the situation.

At that meeting, the consideration was paid or delivered to the respective stockholders?

Answer. Yes, sir.

Question. And the stock was indorsed in blank and delivered by the former owner of the stock?

Answer. Some of it had been indorsed before. It was brought there and some indorsed there.

Question. But the actual indorsement, the transfer and delivery was consummated that day?

Answer. Yes, sir.

Question. With whom were your negotiations carried on in reference to the sale of the stock under your options?

Answer. With Mr. Mandeville and Mr. Baldwin.

Question. And you knew at that time, with what manufacturing concern they were associated or connected?

Answer. Yes, sir.

Question. Do you recall whether there was any discussion between you and either Mr. Mandeville or Mr. Baldwin in reference to the sale or acquisition of the stock being a violation of the law?

Answer. Yes, sir; it was mentioned, but they thought it was not; that they were doing anything wrong.

Question. The question of whether or not the acquisition of the stock was a violation of law was really discussed?

Answer. Yes, sir; more between Mr. Mandeville and Mr. Baldwin. They were talking over as to whether or not it would be advisable for them to do it.

Question. But you say they concluded there was no violation?

Answer. That there was nothing wrong in what they were doing.

Question. And the sale or acquisition proceeded to a conclusion?

Answer. Yes, sir.

Question. After the stock in the four companies had been delivered in the office of the Guaranty Trust Co., did any representative of the Thatcher Manufacturing Co. appear before the meeting in which you and the other stockholders were assembled?

Answer. Yes, sir; Mr. Mandeville and Mr. Baldwin.

Question. That was immediately following the transfer of the stock?

Answer. Yes, sir.

Question. Do you recall what statements, if any, they made to you and the other former stockholders?

Answer. They said they wanted—Mr. Baldwin made a little talk to them and told them they wanted all of the former managers to remain in charge until they were further notified—a kind of a little get-together talk that is usually made at a time like that.

Question. And who made that talk?

Answer. Mr. Baldwin, I think. Mr. Mandeville made a little talk, too, but I do not remember what he said.

Question. Was any action taken that day in reference to resignations of the officers of the four companies named?

Answer. All of them resigned.

Question. What disposition was made of the resignations?

Answer. I do not know.

Question. Do you recall how they resigned? Or by what manner?

Answer. I resigned by just signing my resignation.

Question. Making a written resignation and signing it?

Answer. Yes. I presume all the others did, too. I know what I signed. I presume the others did, too.

Question. What disposition was made of the written resignation?

Answer. I do not know.

Question. Did you keep it or did you give it to somebody else?

Answer. I did not keep it, no.

Question. What did you do with it?

Answer. I do not know. A representative of the Guaranty Trust Co. went around.

Question. Do you remember whether you gave it to Mr. Baldwin or to Mr. Mandeville?

Answer. No; I do not know what they did with it.

May I make a statement without being asked about this matter?

Mr. BRINDLEY. I am perfectly willing.

Mr. SMITH. So am I.

The WITNESS. Mr. Baldwin and I differed on one very important matter, and I thought it was subject to rather severe criticism. He kept the price of bottles about 20 per cent, 15 to 20 per cent, under what other bottle manufacturers were getting at the same time.

I happened to be a small stockholder of Thatcher at that time and I did not see any need for that. I felt that he was so straight that he

leaned backwards a little bit, and his whole policy seemed to me wanting to play fair with the trade. I thought he had played a little bit too fair with them. I was perfectly willing for him to charge no more, but I thought it was a big mistake to charge less than he could have gotten and had a right to get.

Whisky and grape-juice bottles were selling at $11.50 to $12 a gross, and for a while there he was selling his quart milks at $10 and $10.50 a gross. There is more glass in a quart milk bottle than a quart grape-juice or whisky bottle.

His reason for that, as he explained it to me, was that he did not want anyone to think because he had acquired these plants, he was going to raise the price. But I figured that if he had just put the price up to the market price, of what the other people were getting, he would be treating the trade all right.

Mr. BRINDLEY. I believe that is all I have at this time.

Cross-examination by Mr. SMITH:

Question. Mr. Axton, this letter, Exhibit No. 2, is a little obscure. I will read the second paragraph:

"The Woodbury Glass Company has, in the past, manufactured a small amount of milk bottles, but by a different process from that employed by the Travis Glass Company, covering almost wholly different territorial field. For about a year past, however, the manufacture of milk bottles by the Woodbury Glass Company has been declining, and it is the intention of the company gradually to discontinue all manufacturing thereof. There is, therefore, practically no competition between the two companies."

I have understood all along up to this time that the Woodbury Glass Co. on August 28, 1919, was not, as a matter of fact, making milk bottles at all, and I am quite a little surprised by the intimation here that it was. Are you sure, of your own knowledge, Mr. Axton, that they were making milk bottles on that date?

Answer. Only by that letter. When I wrote that letter, I was pretty confident that they were making them or just very recently before that time.

Question. You do not actually know of your own knowledge whether they were on that date making milk bottles?

Answer. No, sir.

Question. Did you come in contact with the actual manufacture and selling of the Woodbury company at that particular date?

Answer. No, sir; I was not in the selling end of it.

Question. I am inclined to think that you are mistaken on that fact. I want to get it correct, that is all.

Answer. Mr. Smith, I was more in the executive end of the business, trying to handle the finances and get the company on its feet that way. I spent very little time at Winchester. I still maintained my residence at Louisville and would run up there for hardly more than ever a day or two at a time; sometimes I would be away for months. So, some of these details I might have made an error in but that was my impression at the time I made it. Sometimes they might have gone a month without making any milk bottles. The milk-bottle business was a very small part of our business.

Question. Taking the most recent actual personal knowledge that you had of that manufacture of milk bottles prior to that date, how large was that manufacture per month or week or anything you like?

Answer. How large?

Question. Yes. How many gross did you make?

Answer. I could not state, of my own knowledge; but I heard George Clark say one time that we only made thirty or forty thousand gross of milk bottles a year.

Question. Do you know what time that was made?

Answer. It was recent enough before that for me to have in my mind that it was a very small part. My statement was made more from what he told me rather than an examination of the records themselves. He was our general manager.

Question. Do you know whether there was more than one furnace used on milk bottles?

Answer. I do not think there was one entire furnace.

Question. Certainly not more?

Answer. Oh, no. I am almost positive that there was not even half of one furnace.

Question. And these were made wholly by other processes than the Hartford Fairmont?

Answer. Yes, sir.

Question. What is known as the semiautomatic?

Answer. Semiautomatic, yes, sir.

Question. I suppose there were very numerous manufacturers who made small amounts of milk bottles by that process?

Answer. Quite a few of them, I am informed.

Question. Do you remember a certain sales contract that the Woodbury company had with Linton and Scott?

Answer. Yes, sir.

Question. Did that contract cover the entire product of Woodbury Glass Co.?

Answer. Yes, sir; with certain exceptions in whiskey bottles and any bottles that I might sell. I was a jobber on that market. Lucking, who was one of our stockholders, might want to purchase.

Question. Do you know whether that contract specified milk bottles?

Answer. I do not recall. Let me add this to my statement in connection with Exhibit No. 2. That statement was made not with a view to having any knowledge of just what had been made the month before or two months before, but probably the general business as it had been conducted since I came in and for some time before I came in in which they had been making milk bottles. They might not have been making any milk bottles for several months before that statement was made. That is about the general business, as I remembered it. We had the milk bottle molds and could have made milk bottles just like any other glass factory can. The processes for making milk bottles are available to any glass manufacturer in the country, as we made them or similar methods. Anybody could have got that kind of a machine that we had.

By Mr. BRINDLEY:

Question. And the manufacture of milk bottles made by the Woodbury Glass Co. during the time you were connected with it were not made on the Hartford Fairmont machine?

Answer. No, sir.

Question. But the other machines or facilities which the Woodbury Glass Co. possessed?

Answer. We felt that we were not really, we could hardly be called in the milk bottle business; the business was so small. Our big business, what we were striving for, was condiment ware, after the whisky bottle business went out.

By Mr. SMITH:

Question. And you had no license or right to use the Hartford Fairmont feeder?

Answer. Absolutely none for the manufacture of milks.

Question. During the four months preceding August 28, 1919, how frequently were you at the Woodbury factory?

Answer. I doubt if I was at the Woodbury factory more than two or three times.

Question. For how long a total time were you there?

Answer. I would say all told it would not exceed three or four days.

Question. I think you said, Mr. Axton, that you were not, at one particular time, at least, the holder of a majority stock of the Woodbury Glass Co. Were you ever a holder of the majority of that stock?

Answer. No, sir.

Mr. SMITH. That is all.

Redirect examination by Mr. BRIDLEY:

Question. Mr. Axton, a few moments ago, you mentioned the name of a Mr. Clark. Who was the Mr. Clark?

Answer. George H. Clark was vice president and general manager of the Woodbury Glass Co.

Question. He was associated with you in the ownership of the stock of the Woodbury Glass Co.?

Answer. He owned part of the stock; yes, sir.

Question. And the stock owned by Mr. Clark and other stockholders of the Woodbury Glass Co. was included in the options which you held on the stock of the four companies?

Answer. No, sir; I did not have any options of any stock of the Woodbury Glass Co. They trusted me enough and I trusted them to know that we would act together.

Question. And you did act together?

Answer. Yes, sir.

Question. And the entire common stock of the Woodbury company, you say, was acquired in New York City on the date mentioned by you in connection with the acquisition of the stock in the other companies?

Answer. Yes, sir; with the exception of one little lot that was sent on later. One of our minority stockholders did not know that we were going to sell out and did not know anything about it, and he got a wire from me to send his stock to the Guaranty Trust Co. with draft attached.

Question. And he did so?

Answer. Indeed he did.

Question. Is the Mr. Clark you mentioned living at this time?

Answer. He has been dead about two-and-one-half years.

Question. After the sale of the stock in the four companies and after your resignation as president of the Woodbury Glass Co., did you have any connection with the Thatcher Manufacturing Co. or the Woodbury Glass Co.?

Answer. I had an agreement to assist in financing the bond issue that came out later on, but that was with the Sterling Glass Co. That is the name that had been selected at that time, but I had no connection with the Woodbury Glass Co.

Question. And you continued in a limited way in assisting in financing or carrying through the deal?

Answer. Yes, sir.

Question. And your contract or agreement was with whom?

Answer. The Sterling Glass Co.

Question. Did your contract or agreement include any compensation to you for your services?

Answer. Yes, sir.

Question. And was that compensation paid to you?

Answer. Yes, sir.

Question. By whom was it paid?

Answer. The Thatcher Manufacturing Co.

Question. When did that agreement involving your services terminate?

Answer. About six months after I sold my stock.

Mr. BRINDLEY. I believe that is all.

Mr. SMITH. That is all.

(Whereupon at 12 o'clock, noon, a recess was taken until 2 o'clock p. m.)

AFTER RECESS.

FRANCIS E. BALDWIN was thereupon recalled as a witness, and although he had been previously sworn, he was again sworn by the examiner, and testified as follows:

Direct examination by Mr. SMITH:

Question. What is your official position, again?

Answer. President of Thatcher Manufacturing Co.

Question. You heard the testimony of Mr. Axton this morning, and especially his letter introduced in evidence of August 28, 1919. Were you, on August 28, 1919, at all familiar with the business, manufacturing, and selling to the Woodbury Glass Co.?

Answer. To a certain extent: yes, sir.

Question. Naturally, because you had been concerned in this whole transaction?

Answer. Yes, sir, and I had been very intimately connected—Mr. Clark and I had been very intimate friends for several years.

Question. And, of course, your company had been making milk bottles and selling them for a great many years?

Answer. Yes, sir.

Question. So far as you know, on that date, was the Woodbury Glass Co. making milk bottles?

Answer. They were not, and had not been making them for several months.

Question. Would you probably have known it if they had been?

Answer. Yes, sir, I think I should.

Question. Your salesmen certainly would have met their competition?

Answer. Yes, sir; and then I also talked to Mr. Clark and he told me they had stopped making milk bottles, and had not been making them for several months.

Question. For several months before August, 1919?

Answer. Yes, sir; when we took over the matter, they had not contracts for milk bottles. None were there in stock; there wasn't any milk bottles in stock.

Question. As a matter of explanation, milk bottles are usually sold on long time contracts, are they not?

Answer. Generally, a contract for a year.

Question. And a concern that does any appreciable business in milk bottles will have those contracts outstanding?

Answer. Yes, sir.

Question. And you found none of those in the Woodbury business?

Answer. No, sir; the months of July and August are the months that the contracts are largely made. All these other companies had contracts which we completed—which they completed under us.

Question. I show you a book and ask you to tell me what it is [handing book to witness]?

Answer. It is the stock book of the Woodbury Glass Co.

Question. What dates does it cover from beginning to end?

Answer. The first date here is September 1, 1910. I think the last date is January 5, 1920.

Question. Will you look at that book for the entries from July 1, 1919, to the end, and tell me whether you find any record on that book of any holdings in that company by either the Sterling Glass Co. or the Thatcher Manufacturing Co.?

Answer (after looking through book). No, sir.

Question. There are none?

Answer. None.

Question. I show you another book and ask you what that is [handing book to witness]?

Answer. That is the Travis Glass Co. stock book.

Question. Will you look at that book, from July, 1919, to the end and tell me whether you find any evidence of holdings of stock in that company by the Sterling Glass Co.?

Answer (after looking through book). None transferred to the Sterling Glass Co.

Question. I show you another book and ask you what that is [handing book to witness]?

Answer. Lockport Glass Co. stock book.

Question. The same question, whether there appears in that book from July 1, 1919, to the end any holdings of stock by the Sterling Glass Co.?

Answer (after looking through book). No.

Question. I show you another book and ask you what that is [handing book to witness]?

Answer. The Essex Glass Co. stock book.

Question. The same question.

Answer. From the first of July?

Question. Yes, from the first of July, Sterling Glass Co.

Answer (after looking through book). No, sir. Mr. Smith, I might state, that as I remember it there was but one furnace at the Woodbury Glass Co. in operation.

Question. At what time?

Answer. In August, 1919. Afterwards we built two new furnaces and built four new lehrs. At the time in August, they had two feeders working on one furnace with Lynch machines.

Question. What were they making?

Answer. In August I think they were making some whisky and they were making condiment bottles and they stopped making whisky bottles.

Question. You know yourself, of course, as a matter of fact, that the license from the Hartford-Fairmont to use its feeders which the Woodbury Glass Co. had did not cover the right to make milk bottles?

Answer. Did not: no, sir.

Question. Because you know that company now has that license.

Answer. I have seen that license: we own it.

Question. Do you remember the date when the Hartford-Fairmont licenses of these four companies—the Travis, Essex, Woodbury, and Lockport—were assigned to your company, the Thatcher Co.?

Answer. I think it was in July, 1920.

Question. July: do you remember it?

Answer. I can not remember just the date. I know that it was after the arrangements made in regard to the issuing of the bonds.

Mr. SMITH. That is all.

Cross-examination by Mr. BRINDLEY:

Question. Mr. Baldwin, the Woodbury Glass Co. is still in existence, is it not?

Answer. Yes, sir.

Question. And who owns its common capital stock now?

Answer. Practically speaking, Thatcher Manufacturing Co. There are a few shares held by individuals on the board of directors.

Question. The stock of the Woodbury Glass Co. was included in the mortgage made by the Thatcher Manufacturing Co. to secure the bond issue of 1920?

Answer. I believe it was.

Question. With the exception of a few shares issued to individuals for the purpose of qualifying directors and officers, all the stock of the Woodbury Glass Co. is now owned by the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. Examine a book I hand you and see if you can identify it. What is it?

Answer. It is the stock book of the Woodbury Glass Co., the common stock.

Question. Is it the one which shows the present record condition of the stock in the Woodbury Glass Co.?

Answer. Yes, sir.

Question. Can you refer to that book and tell what the outstanding stock of the Woodbury Glass Co. amounts to, and by whom it is held?

Answer. Yes, sir. F. E. Baldwin has 1 share standing in his name; George H. Clark has 1 share standing in his name. He is dead and I do not know what has become of that. F. L. Collins has one share standing in his name; L. M. Kimmel has one share standing in his name; R. W. Niver has one share standing in his name; F. E. Baldwin has 1,995 shares, or really 1,996 shares. I have included the first share.

Question. The acquisition of the stock of the Travis, Essex, Lockport, and Woodbury Glass Cos. was acquired from Mr. Axton and his associates in the month of August, 1919?

Answer. Yes, sir.

Question. And the stock then acquired in all the companies was attached to notes given by you and your associates to the Guaranty Trust Co. of New York?

Answer. It was left with them as collateral security.

Question. Subsequently the certificates of stock which were attached to the notes as collateral security were canceled and a like amount of stock issued to other parties?

Answer. Yes, sir.

Question. And the reissue of stock was delivered to the Guaranty Trust Co. as collateral security for the notes held by it?

Answer. Yes, sir. I do not think they were formally attached to the notes; they simply held them as collateral.

Question. The cancellation of the old stock and the reissue of the new stock occurred in December, 1919, as shown by this record?

Answer. By that record it so appears, and I assume it to be correct.

Question. One share of the stock in the Woodbury Glass Co. on December 8, 1919, was issued to you?

Answer. Yes, sir.

Question. And on the same date one share of the stock was issued to George H. Clark?

Answer. Yes, sir.

Question. And one share of stock to F. L. Collins?

Answer. Yes, sir.

Question. And one share of stock to L. M. Kimmel?

Answer. Yes, sir.

Question. And one share of stock to R. W. Niver?

Answer. Yes, sir.

Question. And a certificate for 1,995 shares was issued to H. C. Mandeville?

Answer. Yes, sir.

Question. All of that appears on the stock book?

Answer. Yes, sir.

Question. Subsequently, the 1,995 shares issued to Mr. Mandeville were canceled and another certificate issued for that amount of stock in your name?

Answer. Yes, sir. And that was done on January 5, 1920?

Answer. It so appears there.

Question. And from this record, that is the last entry in the stock book?

Answer. Yes, sir.

Question. So, as a matter of fact, 1,996 shares of the stock of the Woodbury Glass Co. stand in your name?

Answer. Yes, sir.

Question. But, as you say, that stock is really owned by the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. It is also true that it owns the other stock in the name of the other individuals, does it not?

Answer. No, sir.

Question. These one shares?

Answer. Oh, yes; I thought you meant the other companies.

Question. It was simply issued to the individuals named for the purpose of qualifying officers and officials?

Answer. And board of directors.

Question. When did you first visit the Woodbury Glass Co.'s plant?

Answer. I could not tell you. But some time after we purchased it and we were rebuilding the furnaces. I think I had been there prior to that time to see Mr. Clark, but no thought at that time of ever being interested in the plant.

Question. You had seen the Woodbury Glass Co.'s plant prior to the acquisition of that stock?

Answer. I think I had; yes, sir.

Question. But not, as you say, with any thought of ever acquiring the stock or the property itself?

Answer. That is right.

Question. And at the time of the acquisition in 1919, you had paid no visit to the Woodbury Glass Co.'s plant for the purpose of investigating it, had you?

Answer. No, sir; I had not.

Question. You did visit it shortly after the acquisition of the stock in 1919?

Answer. Just how shortly after, I do not remember, but not a very great while after; a few months.

Question. And you had not visited it for a few months preceding the stock acquisition?

Answer. No, sir. I had Mr. Niver, our general superintendent, visit the plants and pass upon them. His judgment is better than mine.

Question. So, as a matter of fact, you know nothing of your own knowledge regarding the output or production of the Woodbury Glass Co. at the time of the stock acquisitions in 1919?

Answer. Only their contract and what Mr. Clark told me.

Question. When you visited the plants shortly after the acquisition of the stock, the Woodbury Glass Co. was engaged in manufacturing bottles, was it not?

Answer. Yes, sir.

Question. And by what process or machines?

Answer. With the Hartford-Fairmont feeder and the Lynch machines.

Question. The Lynch machine is different from the Hartford-Fairmont feeder?

Answer. It is a machine that forms the bottles. The feeder is simply to get the metal into the mold.

Question. At the time you visited the Woodbury plant, it was equipped so that it could manufacture milk bottles, was it not?

Answer. No; I do not think they were in shape so that they could have manufactured milk bottles. I do not think their machines could have made a good milk bottle.

Question. Did you see the appliance which could have made the mold?

Answer. I did.

Question. The Woodbury Glass Co. could have manufactured milk bottles on its machinery facilities, could it not?

Answer. Not with the Hartford-Fairmont feeder, and that is the only thing they had in shape to get metal into their molds at that time.

Question. At the time you made your visit?

Answer. Yes, sir; at the time we bought them out.

Question. Do you know how long the Hartford-Fairmont feeder had been in operation at the Woodbury plant?

Answer. I think it had been in operation three or four months.

Question. In your first examination, some testimony was given in reference to a bond issue by the Thatcher Manufacturing Co. in the year 1920, I believe.

Answer. Yes, sir.

Question. You recall that bond issue?

Answer. I certainly do.

Question. Feelingly, I believe you said on your first examination?

Answer. Quite feelingly.

Question. That bond issue was secured by a mortgage giver by the Thatcher Manufacturing Co., I believe.

Answer. Yes, sir.

Question. And that mortgage included, as you stated a moment ago, the stock of the Woodbury Glass Co. as well as the property owned by the Thatcher Manufacturing Co.?

Answer. Yes; I am very sure that the stock was put in there, although I do not remember; I did not commit that mortgage to memory, but I am very sure it was included. In fact, they intended to cover everything that we had and some besides. I am very sure they got it in. The mortgage itself would show, of course.

Question. What became of the mortgage during the bond issue or what became of the bond issue itself?

Answer. The bond issue has been called and the bonds have not all been turned in yet. I am saying that because I am getting letters every few days in regard to it.

Question. In other words, the Thatcher Manufacturing Co. is retiring or calling that bond issue?

Answer. It has recalled and deposited the money in the Guaranty Trust Co. to buy all the bonds.

Question. As it had a right to do under the terms of the bond issue itself?

Answer. Yes, sir.

Question. So, as a matter of fact, the Thatcher Manufacturing Co. has paid and discharged the bonds?

Answer. Yes, sir; so far as the company is concerned, and I think Mr. Mandeville told me that the mortgage had been discharged.

Question. And the Thatcher Manufacturing Co. now owns all of this property free from the terms of the bond issue or the mortgage?

Answer. Yes, sir; so I understand.

Question. And that was paid by the Thatcher Manufacturing Co. itself?

Answer. Yes, sir.

Question. Where did the Thatcher Manufacturing Co. secure the funds with which to cover the bonds?

Answer. The bonds had the option of being converted into preferred stock or common stock. A certain amount was converted into prefered stock and a few into common stock, and we made arrangements to borrow on our notes, series A to run one year, and series B to run two years, from August 1, last, for a million dollars.

Question. And so, under that arrangement, you have discharged the bond issue?

Answer. Yes, sir.

Mr. BRINDLEY. I believe that is all.

Redirect examination by Mr. SMITH:

Question. As a business man, it was your habit to know considerable about the production and sales of your competitors?

Answer. Yes, sir.

Question. Your salesmen, I presume, reported competition?

Answer. Not only that, but there was what is called the Milk Bottle Manufacturers Exchange in which each member of that Exchange recorded their contracts and their orders, and the cost of maintaining the exchange was figured up from the invoices which were sent to the exchange at a pro-rata share.

Question. Was your company advised through that exchange of the production of milk bottles by other people?

Answer. The reports were sent to us and we knew. A daily report was sent out.

Question. Based on those various facts, did you have any information whatsoever, up to August 28, 1919, that for the preceding six months, we will say, Woodbury Glass Co. was making milk bottles?

Answer. I would not say that it went back as far as six months, but I am very sure that as far back as three months they were not making or taking orders for or selling milk bottles.

Question. So that at the time of the acquisition of the stock in 1919, so far as you knew, the Woodbury company was not your competitors?

Answer. They were not.

Question. I presume that the records of the Woodbury company, selling and manufacturing contracts, would show that situation?

Answer. Yes, sir.

Question. You have those records?

Answer. I think we must have them; I presume so. Mr. Collins can find anything, I think.

Mr. SMITH. That is all.

Recross-examination by Mr. BRINDLEY:

Question. Mr. Baldwin, as I remember, in your former examination at Elmira, you testified that the Thatcher Manufacturing Co. sold milk bottles in practically all the States of the United States?

Answer. Practically all. We endeavor so to do.

Question. You pretty well cover the country?

Answer. Very well indeed.

Question. As a matter of fact, at the time of the stock acquisition in 1919, the Thatcher Manufacturing Co. was selling milk bottles in the Middle Western States, was it not?

Answer. In every one of them?

Question. And included in that were the States of Indiana, Kentucky, and Ohio?

Answer. Yes, sir, and Illinois.

Question. And I believe you also testified on your other examination that at the time of the stock acquisition in 1919, the Thatcher Manufacturing Co. was actually in competition in interstate commerce, with the Travis, Essex, and the Lockport Glass Co's.

Answer. We were, and I assume that I testified to it.

Question. That is a fact?

Answer. That is.

Question. You do not know that the Thatcher Manufacturing Co. was in competition with the Woodbury Glass Co., do you?

Answer. I think I know we are not at that time.

Question. But if the Woodbury Glass Co. was actually engaged in manufacturing milk bottles and in selling them in interstate commerce in 1919, in the Middle Western States, then the Thatcher Manufacturing Co. was in competition with it at that time, was it not?

Answer. If they were, yes.

Question. I am making that hypothetical.

Answer. Yes.

Question. And basing it on the statements made in the letter of Mr. Axton. Of course, you repeat that so far as your knowledge goes, you did not think the Woodbury Glass Co. was manufacturing milk bottles.

Answer. No; I feel that I know that they were not, from the fact that they had been members of this milk bottle manufacturers' exchange, and that they had been making reports.

Mr. BRINDLEY. I believe that is all.

Redirect examination by Mr. SMITH:

Question. If Woodbury had been making milk bottles in August, 1919, the amount must have been very small to escape the attention of your organization, was it not?

Answer. Yes; I do not think they ever made over 25,000 gross in a year.

Question. How much was Thatcher Co. making at that time?

Answer. You have got it in the records here. I think we were making two or three hundred thousand gross; three or four hundred thousand gross.

Question. If I recollect rightly, the total milk bottle production at that time in the country was not far from a million gross?

Answer. Not far from that. All the manufacturers of milk bottles were not members of the exchange, but of those in the exchange the Thatcher Manufacturing Co. was furnishing a little over 50 per cent, so from that figure I estimate we were making in the neighborhood of about 40 to 45 per cent.

Question. In financing and putting through that bond issue, am I right in understanding that the Thatcher company at the beginning did not propose to put into that mortgage its own assets? I mean the assets of the original Thatcher company?

Answer. Well, we did not want to: no.

Question. You did not want to?

Answer. No.

Question. What made you put them in?

Answer. Because we could not possibly put it through without.

Question. The bankers insisted on it?

Answer. Yes, sir.

Question. But it was not your original intention to do it that way?

Answer. The original intention was to keep it entirely separate.

(Witness excused.)

(Discussion off the record.)

Mr. SMITH. Judge, as we have already discussed, I will not rest here because I would like to introduce further evidence on the question of milk bottle production. If you will allow me I would like to do this at a later date convenient to yourself and Colonel Brindley.

Examiner AVERILL. Do I understand, gentlemen, that the commission rests?

Mr. BRINDLEY. For the present.

Examiner AVERILL. Of course, they would be entitled to rebuttal. It rests in chief?

Mr. BRINDLEY. It rests at the present time.

Examiner AVERILL. And the respondent desires to introduce further testimony.

Then, gentlemen, we will adjourn until the 23d day of November, at 10 o'clock a. m., at the office of the commission in New York City, when the taking of further testimony will be resumed.

(Whereupon, at 3.15 o'clock p. m., an adjournment was taken until November 23, 1922, at 10 o'clock a. m. to the offices of the Federal Trade Commission, New York City.)

NEW YORK, *November 23, 1922.*

Met pursuant to adjournment, 10 o'clock a. m.

Before: E. M. Averill, Esq., examiner.

Appearances: A. R. Brindley, Esq. (Washington, D. C.), for the Federal Trade Commission; Herbert Knox Smith, Esq. (Hartford, Conn.), for the respondent.

LUTHER M. KIMMEL, was thereupon called as a witness, and after being duly sworn, testified as follows:

Direct examination by Mr. SMITH:

Question. Will you give your address and occupation?

Answer. Winchester, Ind. I am now manager of the Woodbury Glass Co.

Question. How long have you been manager of that company?

Answer. I have been connected with the company for about 25 years in one capacity or another.

Question. How long manager?

Answer. Just this year.

Question. Has your work been such that you have been familiar with the production of the company?

Answer. I have.

Question. For how long?

Answer. For at least 20 years.

Question. On August 28, 1919, was the Woodbury Glass Co. making any milk bottles?

Answer. No, sir.

Question. How long before that time had they ceased making milk bottles?

Answer. July 31, 1919, as I remember, was the last date.

Question. Did they sell any milk bottles after August 28, 1919?

Answer. I would say in a small way that they may have sold a few.

Question. About how many?

Answer. From 500 to a thousand gross, probably.

Question. What sort of bottles were those?

Answer. A great many of them, probably the largest per cent of them, were what we would term mislettered or off capacity.

Question. By "off capacity" you mean too small or too large?

Answer. Yes; and also a portion of plain ware.

Question. Did the Woodbury company have on that date any contracts outstanding for delivery of milk bottles?

Answer. Yes.

Question. With whom?

Answer. As I remember, the Illinois Glass Co. and the Bessire company.

Question. The deliveries made after August 28, 1919, were made on those contracts?

Answer. Yes, sir.

Question. When did the Woodbury company decide not to make any more milk bottles?

Answer. It was the time or probably a little before the time that they entered into a contract with the Hartford-Fairmont Co., for automatic feeding devices. As I remember, that was either in early 1919 or late 1918. I am not quite sure as to the date.

Question. It was before August 28, 1919?

Answer. Yes, sir.

Question (handing book to witness). Glancing at that memorandum, which is the digest of the contracts, and refreshing your memory thereby, can you give any more definitely the date when the contracts with the Hartford-Fairmont Co., of which you spoke, were entered into? If you do not remember the date, never mind.

Answer. I thought it was in 1918, some time in 1918.

Question. Did that contract with the Hartford-Fairmont Co. call for the taking of Hartford-Fairmont feeders by the Woodbury company?

Answer. Yes.

Question. How many?

Answer. All told eight, I believe, that they were to take.

Question. At the time that contract was made how many feeders of the Hartford-Fairmont could have been used on your furnace equipment?

Answer. We had two furnaces at that time, and each furnace would accommodate two feeders.

Question. So that four of the feeders that you were to take would have taken up all your furnace capacity?

Answer. Yes, sir.

Question. Did those contracts with the Hartford-Fairmont Co. allow you to make milk bottles on the feeders?

Answer. No, sir.

Question. So your recollection of that contract with the Hartford-Fairmont is that it either determined or followed a definite policy of not making any more milk bottles by the Woodbury company?

Answer. Yes, sir.

Question. Do you know about what the total production of milk bottles in the country was in 1919?

Answer. No, I can not say that I do.

Question. What was the business reason which caused the Woodbury company to stop making milk bottles?

Answer. In the first place, the Woodbury Glass Co. never considered themselves very much of milk bottle manufacturers. In other words, it was a sort of makeshift at times when other lines were slow and dragged.

Question. Sort of a filler in?

Answer. Sort of a filler in; yes, sir.

Question. You said in the first place it was a filler in. Was there any other reason?

Answer. Our machine was [illegible]solete type of machine, and we never considered it profitable to make milk bottles.

Question. Do you remember whether there was any change in the price of milk bottles on those few gross that you sold after August 28, 1919, as compared with the price immediately before that date?

Answer. No, I can not recall.

Question. You did not have to do with price?

Answer. No.

Question. What was the main business of the Woodbury Glass Co. at that time?

Answer. At that time it was on wide-mouth and narrow-mouth condiment ware.

Question. It is still, is it not?

Answer. Yes.

Question. Do you remember how many milk bottles the Woodbury company made in 1918?

Answer. In 1918, it was approximately 34,000 gross.

Question. Do you remember how many in 1919?

Answer. In 1919 right close to 8,000 gross.

Question. In each case, those were the outside figures?

Answer. Yes; those were the maximum.

Mr. SMITH. That is all.

Cross-examination by Mr. BRINDLEY:

Question. How long had you been connected with the Woodbury Glass Co. prior to August, 1919?

Answer. I began in their employ in January, 1898.

Question. What position did you hold with the Woodbury Glass Co. in August, 1919?

Answer. Treasurer, I believe.

Question. And you were a stockholder of the Woodbury Glass Co.?

Answer. Yes.

Question. What disposition did you make of your stock?

Answer. That stock was sold afterwards, I believe, to the Guaranty Trust Co. That is where I received my check for the stock.

Question. Are you a stockholder in the company now?

Answer. No, sir.

Question. What is your position with the company at this time?

Answer. Nothing more than an employee.

Question. In 1919 and for some years prior thereto, the Woodbury Glass Co. did manufacture milk bottles?

Answer. Yes, sir.

Question. What disposition was made of the milk bottles manufactured by the Woodbury Glass Co.?

Answer. They were sold very largely to large jobbers.

Question. In what sections of the country?

Answer. They reached over the United States pretty generally.

Question. Did you ship milk bottles, or did the Woodbury Glass Co. ship milk bottles into States outside of Indiana?

Answer. Yes.

Question. Name some of the States into which they shipped milk bottles?

Answer. Wisconsin, Illinois, Missouri, some in Ohio, Michigan, I would say.

Question. Do you recall any other States into which they shipped milk bottles?

Answer. I think as far as California, probably.

Question. At that time, in the year 1919 and prior thereto, was the Woodbury Glass Co. in competition with other concerns making milk bottles?

Answer. I would say not directly in any large way.

Question. Not in any large way, you say?

Answer. Yes.

Question. Well, in any way whatever?

Answer. We sold a few gross to our local trade around Indianapolis and near-by Winchester. We simply sold direct.

Question. So in States other than Indiana, you had no competition in the sale of milk bottles?

Answer. I would say not.

Question. You had the field to yourselves?

Answer. Well, we sold our products to jobbers.

Question. Did any other milk-bottle manufacturers sell to jobbers?

Answer. I presume they did.

Question. Do you recall any milk-bottle concerns that sold to jobbers and purchasers or consumers in the territory in which the Woodbury Glass Co. sold milk bottles?

Answer. I do not know for a positive fact that there were any milk-bottle manufacturers who sold direct to those jobbers.

Question. Well, did they to anybody in the territory to which you sold?

Answer. Yes.

Question. What companies?

Answer. There is the Winslow Glass Co., Columbus.

Question. Can you name any others?

Answer. The Essex Glass Co. at Mount Vernon.

Question. Any others?

Answer. Those were the main ones that were selling in our territory, I would say.

Question. The Essex Glass Co., then, did sell in your territory?

Answer. Yes; I think they did to some extent.

Question. Do you know where the Essex Glass Co. was located?

Answer. Mount Vernon, Ohio.

Question. Do you know where the Travis Glass Co. was located?

Answer. Clarksburg, I believe.

Question. In what State?

Answer. West Virginia.

Question. Was the Travis Glass Co. in competition with the Woodbury Glass Co. in any section in selling milk bottles?

Answer. I could not say.

Question. But you do know that the Woodbury Glass Co. was in competition in the sale of milk bottles with the Essex Glass Co., do you not?

Answer. Yes; I know the Essex sold to some concerns that our bottles eventually went to; yes.

Question. In what States?

Answer. I do not recall now.

Question. Do you know, as a matter of fact, whether the Essex Glass Co. was in competition with the Woodbury Glass Co. in 1918 or in 1919 in the sale of milk bottles?

Answer. No, I can not say positively.

Question. Have you anything that might refresh your recollection on that question?

Answer. There might be something that would.

Question (handing paper to witness). What is the document you hold in your hand?

Answer. It seems to be a letter from the Illionis Glass Co. of Chicago.

Question. Did you ever see that letter before?

Answer. I probably did.

Question. When did you see it?

Answer. On the 21st of October, 1918, it seems to be stamped.

Question. Did you make any reply to that letter [handing another paper to witness]?

Answer. Yes, sir.

Question. And when did you reply to it?

Answer. On October 21.

Question. Of what year?

Answer. 1918.

Question. Have you a copy of your reply to the letter?

Answer. Yes, sir.

Question. And you are holding it in your hand, are you?

Answer. Yes, sir.

Question. Did you write the letter, a carbon copy of which you are holding?

Answer. I dictated the letter.

Question (handing paper to witness). While you were an officer of the Woodbury Glass Co., October, 1919, did you receive a letter under date of October 19, 1918, addressed to the Woodbury Glass Co. in reference to an order to A. L. Brumund, Waukegan, Ill.?

Answer. I understood you to say in 1919. Do you mean that?

Question. I meant the date on the letter. If I said 1919, I should have said 1918.

Answer. Yes, sir; 1918.

Question. You have that letter now in your hand, have you?

Answer. Yes, sir.

Question. Please read that letter so the reporter may copy it into the record.

Answer. (Reading:)

OCTOBER 19TH, 1918.

Subject: A. L. Brumund, Waukegan, Illinois.

THE WOODBURY GLASS COMPANY.

In reference to shipping order of August 23rd, account of order No. 6780, one carload of quart milk bottles to be shipped December 1st. This car is to come forward just as quickly as possible.

We feel that after this order is completed that it will be some time before we receive more orders from this customer as Essex has worked in on this account and has shipped this customer a carload of bottles and has very good chance of securing their new contract.

Essex has quoted $7.40 per gross on quart milk bottles delivered, whereas our cost is $7.31 per gross delivered in Waukegan. You can readily appreciate that we cannot agree to meet Essex's quotation, but thought it well to give you this information.

We are losing quite a little business to Essex since the last raise you made in price. You will note that very few orders have been placed by us in the last few weeks. Unless something is done pretty soon, we are going to lose all our business in this line.

CHICAGO.

Question. That letter, you say, was written by the Illinois Glass Co.?

Answer. Their Chicago branch, yes, sir.

Question. Did the Woodbury Glass Co. at that time have any contract with the Illinois Glass Co.?

Answer. They had a selling arrangement with the Illinois Glass Co. at that time.

Question. What was that selling arrangement?

Answer. I can not recall whether it was a written contract or whether it was a sort of verbal agreement on the sale, or rather to handle the milk bottles for Woodbury.

Question. What was the latter part of your statement?

Answer. Whether it was a written contract or whether it was simply a verbal arrangement whereby the Illinois Glass Co. sold milk bottles for the Woodbury Glass Co.

Question. But the Illinois Glass Co. did send orders to the Woodbury Glass Co. for milk bottles?

Answer. Yes, sir.

Question. And the Woodbury Glass Co. filled the orders of the Illinois Glass Co.?

Answer. Yes, sir.

Question. And shipped bottles into other States in conformity to those orders?

Answer. Yes, sir.

Question. After receiving the letter from the Illinois Glass Co., which you have just read, did you make any reply thereto [handing letter to witness]?

Answer. Yes, sir.

Question. Have you a copy of your reply to that letter?

Answer. This appears to be, yes, sir.

Question. Read to the reporter your reply to the letter from the Illinois Glass Co. which you have just read.

Answer. [Reading:]

OCTOBER 21, 1918.

Subject: A. L. Brumund, Waukegan, Illinois.

ILLINOIS GLASS COMPANY,
Chicago, Illinois.

GENTLEMEN: We have your letter of the 19th referring to shipping order on August 3rd, account of order No. 6780 for A. L. Brumund, Waukegan, Illinois, and note that customer now desires this car shipped at once in place of December 1st, and we will make such notation on the order and do the very best possible.

Also note what you say with regard to prices that are being made by the Essex Glass Company and no doubt Mr. Clark will write you on this subject.

Yours very truly,

WOODBURY GLASS COMPANY.
L. M. KIMMEL,
Secretary.

Question. Prior to August, 1919, for how many years had the Woodbury Glass Co. been manufacturing and selling milk bottles?

Answer. I just do not remember. It seems to me, though, it was about 1914 or 1915 we began making some milk bottles.

Question. And made them during every year until you ceased in 1919?

Answer. Yes; I think we made some milk bottles each year.

Question. And during that time, the Woodbury Glass Co. was equipped for manufacturing milk bottles, was it?

Answer. Yes; in a way.

Question. And did make and sell milk bottles whenever it felt so disposed, did it?

Answer. Yes.

Question. You spoke of a contract or license the Woodbury Glass Co. made for the use of the Hartford-Fairmont machine, and stated, I believe, that under that contract or license, the Woodbury Co. did not have the right to use the Hartford-Fairmont machine for making milk bottles?

Answer. Yes, sir.

Question. That is true, is it not?

Answer. Yes, sir.

Question. When did the Woodbury company begin manufacturing milk bottles by the use of the Hartford-Fairmont machine?

Answer. It was in 1919. I do not remember the date exactly, but it was in 1919 sometime.

Question. Was it prior or subsequent to the time that you sold your stock in the Woodbury Glass Co.?

Answer. It was prior. We began operating Hartford-Fairmont machines prior to the sale. I can not recall that date, but it just occurred to me that it was sometime in the spring of 1919, but it may have been earlier than that.

Question. If the Woodbury began making bottles with the Hartford-Fairmont machine prior to the sale of your stock in the Woodbury company, the use of the Hartford-Fairmont machine was not exclusive at the Woodbury plant, was it? In other words, you used other processes for making bottles besides the Hartford-Fairmont?

Answer. Yes, until we could get other tanks equipped.

Question. But during 1918, the Woodbury Glass Co. did manufacture and sell milk bottles?

Answer. In what year?

Question. In 1919.

Answer. Yes.

Question. And continued to do that at least up to within a month of the time that you sold your stock in the Woodbury company, did it not?

Answer. Yes.

Question. I believe you stated on direct examination that the Woodbury Glass Co. sold a few milk bottles after August, 1919?

Answer. Yes.

Question. When did you sell your stock in the Woodbury Glass Co.?

Answer. I think it was in August, 1919.

Question. What class of bottles did the Woodbury Glass Co. manufacture and sell after August, 1919?

Answer. Condiment ware.

Question. Please be a little more specific?

Answer. Such as ketchup, chili sauce, mustards, pickles and such lines.

Question. Anything else?

Answer. That is about the line.

Question. Do you recall whether it manufactured or sold any milk bottles at all subsequent to August, 1919?

Answer. I know there was none manufactured whatever after that time.

Question. Have you a copy of the Linton & Scott contract with you?

Answer. No, I have not.

Question. Prior to August, 1919, was the Woodbury Glass Co. in competition in any territory with the Thatcher Manufacturing Co. in the sale of milk bottles?

Answer. They may have been. I did not handle sales, and I do not recall definitely about that.

Question (handing paper to witness). Describe the document which you hold in your hand.

Answer. This appears to be a copy of a shipping order of the Illinois Glass Co.

Question. And addressed to whom?

Answer. Addressed to Woodbury Glass Co., Winchester, Ind., dated April 8, 1919.

Question. And it calls for what?

Answer. It calls for 200 gross quart private mold Wisconsin sealed milk bottles bulk.

Question. And was that order filled by the Woodbury Glass Co.?

Answer. I judge it was. A copy of the invoice is not attached. I judge it was.

Question. And that called for shipments when?

Answer. May 3.

Question. Of what year?

Answer. I judge 1919.

Question. And what is the notation in regard to the filling of that order?

Answer. The notation reads:

"The above car is to be followed with an additional car of quarts to be shipped the first of each month on account of this contract until notified to discontinue."

Question. Do you recall whether or not you received notice to discontinue those shipments?

Answer. No; I do not recall.

Question. Do you recall the last shipment that was made under that order, the date of the last shipment?

Answer. No; I do not.

Question. You have testified in regard to letters between the Woodbury Glass Co. and the Illinois Glass Co. regarding business in which the Essex Glass Co. was interested. Was there any competition between the Essex Glass Co. and the Woodbury Glass Co. after August 28, 1919, in the sale of milk bottles?

Answer. I could not say; I could not recall.

Mr. BRINDLEY. I believe that is all.

Redirect examination by Mr. SMITH:

Question. During the year 1919, you were not in charge of sales, were you?

Answer. No, sir.

Qustion. You were familiar, however, with production of the Woodbury Glass Co.?

Answer. Yes, sir.

Question. Can you give me approximately the total 1919 production of the Woodbury company of all bottles in grosses?

Answer. 1919; my recollection is along about 140,000 gross.

Question. Do you remember the date of the Linton Scott agreement?

Answer. No, I do not. I could not say; I do not recall.

Question. Was it before or after August 28, 1919?

Answer. Before.

Question. Was that agreement just a selling agreement?

Answer. A selling agency.

Question. Did it cover the entire output of Woodbury company?

Answer. I think there were some reservations.

Question. You do not remember what those reservations were?

Answer. I think Mr. Axton reserved certain territories, and then, I think, Woodbury; but just the details of that, I do not recall.

Question. About what percentage of the total production in 1919 was the milk bottle production?

Answer. Right close to 5 per cent, as I remember it.

Question. And that was all before July 31, 1919?

Answer. Yes.

Mr. SMITH. That is all.

Recross-examination by Mr. BRINDLEY:

Question. What was the total production in gross bottles during the year 1918 by the Woodbury Glass Co.?

Answer. I can not recall that. It must have been right close to 200,000 gross.

Question. I believe you stated a few moments ago the total production during 1918 of milk bottles by the Woodbury Glass Co., did you not?

Answer. I do not think 1918; I thought 1919.

Question. What was the gross production of milk bottles by the Woodbury Co. during 1918?

Answer. About 34,000.

Question. Thirty-four thousand gross?

Answer. Yes.

Question. You stated that your contract with Linton & Scott was a sales agency contract, I believe [handing paper to witness]?

Answer. Yes.

Question. And did Linton & Scott give orders to the Woodbury Glass Co. for milk bottles?

Answer. They gave shipping instructions, yes.

Question. And the Woodbury Glass Co. filled the orders from Linton & Scott?

Answer. Yes.

Question. And did Linton & Scott send Woodbury Glass Co. orders for milk bottles?

Answer. Yes.

Question. And what disposition was made of those orders?

Answer. They were filled.

Question. To what States did the Woodbury Glass Co. ship milk bottles on orders received from Linton & Scott during the years 1918 and 1919?

Answer. Outside of California, I do not think they sold a great many milk bottles, as I recall it.

Question. But you did ship milk bottles to California?

Answer. Yes.

Question (handing paper to witness). On orders received by the Woodbury Glass Co. from the Illinois Glass Co., did you ship milk bottles into the State of California?

Answer. I do not recall shipping to California for account of the Illinois Glass Co. We may have, but I do not recall it.

Question. Do you recall whether the Woodbury Glass Co. shipped milk bottles to the State of California during the year 1919 on orders received from Linton & Scott?

Answer. No, I do not recall.

Question (handing paper to witness). During the month of June, 1919, did the Woodbury Glass Co. ship milk bottles into any States outside of Indiana?

Answer. Yes, sir.

Question. Into what States?

Answer. Illinois.

Question. What is the document you hold in your hand?

Answer. This is a copy of a letter that our production office addressed to the mold room setting out a list of milk bottle orders which would constitute a car to be shipped to Fifty-ninth and Laflin Streets, that is, Chicago, Ill.

Question. What is the date of that memorandum?

Answer. June 2.

Question. Of what year?

Answer. 1919.

Question. And was the memorandum complied with?

Answer. I would say yes.

Question (handing paper to witness). What is the document you now hold in your hand?

Answer. This is also a memorandum from the production department to the mold room instructing them to list certain molds to fill certain orders which would constitute a pool car to be delivered to Elsmere Station.

Question. Where was that?

Answer. That is Chicago, Ill.

Question. What is the date of that memorandum?

Answer. June 6, 1919.

Question. And was that memorandum complied with by the Woodbury Glass Co.?

Answer. I would say yes.

Mr. BRINDLEY. I believe that is all.

Redirect examination by Mr. SMITH:

Question. Mr. Kimmel, you gave as two reasons why the Woodbury company before August 28, 1919, decided to stop manufacturing milk bottles as follows:

First, that they were entering contracts to use the Hartford-Fairmont feeder which they could not use for milk bottles, but which would take up their entire furnace capacity.

Second, because their business in milk bottles was extremely small and unprofitable, only a side issue.

Now, did the merger, so to speak, or the combination which began on August 28, 1919, have anything to do with the adoption of that policy?

Answer. No.

Mr. SMITH. That is all.

Recross-examination by Mr. BRINDLEY:

Question. You say it did not, so far as you know?

Answer. It did not.

Mr. BRINDLEY. That is all.
Mr. SMITH. That is all.
(Witness excused.)

FRANCIS E. BALDWIN was thereupon recalled, and having been previously sworn testified as follows:

Direct examination by Mr. SMITH:

Question. Mr. Baldwin, when Mr. Libbey, under the contract of August 28, 1919, formally withdrew December 11, 1919, the entire liability for the four notes of the Guaranty Trust Co., aggregating some $2,000,000, fell upon you personally, did it not?

Answer. Yes, sir. The notes amounting to $1,610,000 and then $250,000 to go to Mr. Libbey.

Question. Amounting to $1,800,000?

Answer. $1,860,000; $2,000,000 would not have made any difference.

Question. It was close enough to $2,000,000?

Answer. Yes; plenty.

Question. At that time or when the August 28, 1919, contract was made, was there any contract, understanding, or relation of any sort between you personally and the Thatcher Manufacturing Co. by which the Thatcher Manufacturing Co. was in any way bound or could be bound to take up that liability on those notes?

Answer. No, sir.

Question. There was no agreement, understanding, collection contract of any sort?

Answer. None whatever.

Question. So that at the time you faced that liability individually?

Answer. Yes, sir.

Question. On the other hand, was there on August 28, 1919, or at any time up to the bond issue, any contract or understanding or agreement or relation between you and Thatcher Manufacturing Co. by which the Thatcher company could have demanded from you the stocks of the three companies or the assets of the three companies or the stock of the Woodbury Glass Co.?

Answer. No, sir; down to the time the agreement was made with the bankers.

Question. Which was in April, 1920?

Answer. Yes, sir.

Question. Did you personally consider, from August 28, 1919, down to the bankers' contract the possibility of getting the Thatcher company to take over this liability?

Answer. No, sir; not until we financed it.

Question. Why didn't you?

Answer. Because I felt that I had a moral obligation to the stockholders of the Thatcher Manufacturing Co. to protect them, and until we could finance it, it did not look like an advantageous proposition to Thatcher Manufacturing Co., in my judgment.

Question. You regarded that as a matter which turned on your trust relationship as an officer of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And you had no right to get out of that obligation by putting it on them?

Answer. No, sir.

Question. Between those two dates, August 28, 1919, and the bankers' contract in 1920, were you under any obligation, agreement, understanding, or contract of any sort whatsoever which would have prevented you from selling, we will say, to the Owens company or to the Hartford-Fairmont company, or to any outsider either the assets or the stock of these companies?

Answer. Neither one.

Question. You were free to dispose of them as you chose and to whom you chose?

Answer. Yes, sir.

Question. When you and Mr. Libbey first talked of the plan which consummated in the plan of August 28, 1919, what was the substance of the plan in your minds?

Answer. Mr. Libbey wished to get the Hartford-Fairmont patents and control in the United States and, as he expressed it, he would buy that and these other companies and would make me president of that corporation. He used the expression that it would be a larger corporation than the Owen Bottle Co.

Question. Mr. Libbey was then the president of the Owen Bottle Co.

Answer. Yes; and a very wealthy man.

Question. And largely interested in that company?

Answer. Yes, sir.

Question. So that was the original expression, to form a company of Hartford-Fairmont and these other outside concerns and you were to be president of it?

Answer. Yes, sir.

Question. But it was essential, in Mr. Libbey's plan, that the Hartford-Fairmont should be gotten in?

Answer. Yes, sir.

Question. And when that fell through, he exercised his privilege and withdrew?

Answer. Yes, sir.

Question. After December 11, 1919, and this $1,800,000 obligation came down on you personally, did you get busy trying to meet that situation?

Answer. Yes, sir.

Question. How long did you have to do it in?

Answer. Mr. Libbey insisted on his name being taken off at once, and I saw Mr. Libbey and said it would be impossible, and he said his name could stay on the note for the year.

Question. What do you mean "for the year"?

Answer. For the balance of the year.

Question. Until what date?

Answer. The Guaranty Trust Co. had agreed to carry those notes for one year from August 28, 1919.

Question. So you had until August 28, 1920?

Answer. Yes, sir.

Question. What did you do then?

Answer. I did not do as much as Mr. Mandeville did.

Question. What did you do personally? I will ask Mr. Mandeville about that later.

Answer. Of course, I was in very frequent consultations with Mr. Mandeville, daily except when he was away; and I had to be in Elmira. I was down here in New York quite a good deal. Mr. Mandeville would see different parties, and would come back and talk with me at the club in regard to it, and then we also got in touch with a concern in Ohio—Canton, Ohio, I believe it was—and they were met in Toledo.

It is not just clear in my mind whether I was present in Toledo or not. I rather think I was. But they came on to Elmira and spent a day or two there and we had quite a little correspondence with them in regard to a set-up whereby we could take care of these notes.

Then Mr. Mandeville saw a large number of people here in New York.

Question. You know, as a matter of fact, that he did?

Answer. I know he told me he did, and I never caught him in a lie yet, so I believed it.

Question. A few questions about this milk-bottle matter: Do you know what the total milk-bottle production of the country was in 1919?

Answer. About a million gross; from a million to a million and a quarter.

Question. Mr. Kimmel has testified as to the existence of certain contracts for milk bottles which the Woodbury company had prior to August 28, 1919, and on which deliveries were made after that date?

Answer. Yes, sir.

Question. Are you familiar with those contracts?

Answer. Well, I am not especially familiar with the contracts. I knew of them, and we filled the orders that they made.

Question. Do you know whether the prices that you filled them at were the same as existed before August 28, 1919?

Answer. They were; yes, sir.

Question. No change in price?

Answer. No change. There was no change in price until the latter part of 1920.

Question. So that the transactions of August 28, 1919, did not have any effect upon that price?

Answer. None whatever.

Question. It is the custom of the trade, is it not, to make long term contracts for milk bottles?

Answer. For a year; yes, sir.

Question. Are you familiar with the so-called Linton & Scott contract?

Answer. Yes, sir.

Question. Do you remember the date of it or approximate date?

Answer. No; the first I heard of the Linton-Scott contract was when we were negotiating this matter, they told me that they had a contract with Linton & Scott to sell their entire output of condiments, glass ware.

Question. When you say "they" you mean Woodbury?

Answer. I mean Woodbury, and I mean Mr. Clark and Mr. Axton.

Question. All of the Woodbury Company?

Answer. Of the Woodbury Company.

Question. You heard of that contract, then, before this August 28, 1919, transaction?

Answer. Yes, sir.

Question. Do you remember the general terms of that contract?

Answer. Yes, sir; they were to sell their entire output with the exception that Mr. Axton reserved the right to sell certain whisky bottles, and Mr. Clark reserved the right to sell to some packers in Chicago. He was to handles them direct, but they were to have a commission, Linton & Scott was to have a small commission upon the amount of the sales of those people.

Question. Did that contract cover milk bottles?

Answer. It did not.

Mr. SMITH. That is all.

Cross-examination by Mr. BRINDLEY:

Question. What were those contracts you spoke of a moment ago that you said the Woodbury Glass Co. filled after August, 1919?

Answer. I did not know that I said that. I said that I never saw the contract. I knew nothing about it, but they told me they had some contracts with those people.

Question. With what people?

Answer. The Bessire company and the Illinois Glass Co., and they sent down orders to us and we filled them.

Question. Who filled them?

Answer. The Thatcher Manufacturing Co.

Question. Those orders were for what?

Answer. Milk bottles.

Question. Were any of those orders filled by the Woodbury Glass Co.?

Answer. No, sir; because they were making no milk bottles at that time and had not been for some time prior to August 28.

Question. But on August 28, 1919, the Woodbury Glass Co. did have outstanding contracts with certain parties for milk bottles, did it?

Answer. With those two parties, so they told me. I think also that they got some bottles filled by other people, but I am not sure of that.

Question. And after August, 1919, the contracts which the Woodbury Glass Co. had for milk bottles were filled by the Thatcher Manufacturing Co.?

Answer. Well, we filled such specifications as were sent on to us by them.

Question. For milk bottles?

Answer. Yes, sir: for milk bottles.

Question. So the contracts that Woodbury Glass Co. had outstanding for milk bottles in August, 1919, were completed by the Thatcher Manufacturing Co., were they?

Answer. I do not know how far they went on the completion. I simply know that we made and shipped to them milk bottles as they asked us to.

Question. Shipped to whom?

Answer. Shipped to the party to whom they were directed.

Question. That is, to the purchaser from the Woodbury Glass Co.?

Answer. No; they were shipped to the purchaser from the jobber. The jobber, the Illinois Glass Co. or Bessire company, would sell bottles to milk dealers and the bottles would be shipped to the milk dealer, not the Bessire company or Illinois Glass Co.

Question. But shipped to the dealer on the order of the Illinois Glass Co. and Bessire & Co.?

Answer. Yes, sir.

Question. And those were orders which were to be sent by Woodbury Glass Co., were they?

Answer. I assume that is true; yes, sir.

Question. So the manufacture and sale of milk bottles by the Woodbury Glass Co. absolutely ceased after August, 1919, did it?

Answer. It had ceased prior to that time, and they could not make any milk bottles.

Question. I believe you stated they had outstanding contracts, though, in August, 1919, for milk bottles?

Answer. They told me they had contracts with these people.

Question. And the Thatcher Manufacturing Co. filled those contracts after August, 1919?

Answer. We made some bottles and shipped on them. I do not know how nearly they were filled. Bessire & Co. are buying bottles off us now.

Question. But the production of milk bottles by the Woodbury Glass Co. absolutely ceased after August, 1919?

Answer. No, sir; they ceased on the 31st day of July, 1919. They never made any milk bottles afterwards.

Question. When did you ascertain that the production of milk bottles by Woodbury Glass Co. ceased on July 31, 1919?

Answer. The actual date I got from Mr. Kimmel.

Question. When did you get that date?

Answer. In a letter from Mr. Kimmel?

Question. When?

Answer. Since our last hearing.

Question. So then you do not know it of your own knowledge?

Answer. No, sir; I know that Mr. Kimmel told me that they had stopped making milk bottles, and Mr. Axton told me so.

Question. You testified at a former hearing in this place on November 3, 1922, did you not?

Answer. Yes, sir; if that is the date; I do not remember the date.

Question. And on that date you testified that the Woodbury Glass Co. had stopped making milk bottles several months before August, 1919, did you not?

Answer. I so understood it and so believed; yes, sir; I did.

Question. And you also testified on November 3, 1922, that "when we took over the matter, they had no contracts for milk bottles"?

Answer. I so testified and so thought at the time.

Question. And you also testified that no milk bottles were there in stock?

Answer. I so testified.

Question. And you also testified that there was not any milk bottles in stock?

Answer. I so testified.

Question. You testify differently now, do you?

Answer. No; I have not testified on that point as to milk bottles in stock.

Question. What about the contracts?

Answer. When I got home and investigated the matter and got this letter from Mr. Kimmel, I made inquiries of my first assistant, and I found that we had made some bottles that they said were unfilled contracts that they had.

Question. And is that all you know about it, what information you got from Mr. Kimmel?

Answer. From Mr. Kimmel and Mr. Collins, our assistants.

Question. So that you were mistaken in your testimony, then, the first part of this month?

Answer. I was very thoroughly mistaken. I knew their contract for these machines and knew they had them in operation for the Hartford-Fairmont feeders and knew they could not make milk bottles with them.

Question. And did you also know that they could make milk bottles by a process different from the Hartford-Fairmont process?

Answer. I knew that they could make milk bottles different, but I knew that they had made a contract for more feeders than their plant would accommodate, and therefore I knew that they felt that I knew that they would not be making any milk bottles.

Question. You merely thought that?

Answer. I formed that conclusion; yes, sir.

Question. You did not know it, as you testified on November 3?

Answer. I evidently did not.

Question. Let us review again the transaction in reference to the acquisition of the stock. The Woodbury Glass Co. is in existence as a corporation to-day, is it not?

Answer. It is.

Question. Who owns the stock of that corporation?

Answer. Practically, the Thatcher Manufacturing Co. There are a few shares—in fact, all the shares standing in other names. I think we discovered that the stock has not been transferred to the Thatcher Manufacturing Co., but I believe it stands in my name, except a few shares.

Question. You certainly do not claim ownership to it, do you?

Answer. None whatever. The Thatcher Manufacturing Co. owns the stock of the Woodbury Glass Co.

Question. When you and Mr. Libbey and Mr. Ford met in the office of the Guaranty Trust Co. in August, 1919, you executed three notes to the Guaranty Trust Co.?

Answer. Mr. Libbey did not meet there.

Question. Well, his representative was there?

Answer. His representative, Mr. Wilcox, his private secretary, and Mr. Ford, representing Mr. Libbey.

Question. Three notes were executed that day to the Guaranty Trust Co., I believe, were they?

Answer. Yes, sir.

Question. You executed one note as maker. Is that true?

Answer. Yes.

Question. And a note was executed by Mr. Ford as maker?

Answer. Yes, sir.

Question. And a note executed by Mr. Libbey as maker?

Answer. Yes, sir.

Question. And each of you indorsed the other two notes made by the other two?

Answer. Yes, sir.

Question. So that all three of you were bound on all three notes?

Answer. Yes, sir.

Question. Then the money secured on these three notes, together with $500,000 secured from the sale of capital stock of the Sterling Glass Co., was used to purchase the capital stock of the Travis, Essex, Lockport, and Woodbury Glass Cos., was it?

Answer. Yes, sir.

Question. And on that day, August 28 or 29, 1919, the capital stock of the Travis, Essex, Lockport, and the Woodbury Glass Cos. was delivered to the Guaranty Trust Co. as collateral security for the notes made by you, Mr. Libbey, and Mr. Ford.

How long did the capital stock of the Travis Glass Co. remain with the Guaranty Trust Co.?

Answer. The stock of all these companies remained with the Guaranty Trust Co. until the money was received from the sale of the bonds which—I was refreshed. I told you once it was in August, but it was just before the 4th of July of 1920.

Question. Refresh your recollection again. Isn't it a fact that in December, 1919, the stock of all four companies was sent to Elmira, N. Y.?

Answer. I believe it was sent to the Second National Bank of the city of Elmira, N. Y., but it was in the possession of the Guaranty Trust Co., under their control.

Question. Why was the stock of the four companies sent in December, 1919, to Elmira, N. Y.?

Answer. For the purpose of having some transfers made of stock, as I remember it now.

Question. Have you the stock books of the Travis, Essex, Lockport, and Woodbury Glass Cos. here to-day?

Answer. Mr. Mandeville here says "Yes." You telegraphed him to bring them, and I have not seen them at all.

Question (handing book to witness). Examine that book you have in your hand and see if you can identify it.

Answer. It is the stock book of the Travis Glass Co.

Question. Examine that book, and tell us how the stock of the Travis Glass Co. stood on August 28, 1919.

Answer. How it stood on August 28?

Question. Yes; 1919.

Answer. I find a certificate here of 61 shares to H. E. Travis, trustee.

Question. Give the date of it.

Answer. It is dated August 20, 1919.

I find another certificate of 62 shares to Laura M. Travis, dated August 20, 1919. This stock is canceled, but it was issued, and I

understand stood in the name of these people on the 28th day of August. It does not show here what date it was transferred. This stock was issued on the 20th of August, 1919, to Laura M. Travis, and therefore I assume that she owned this on the 28th.

Question. From an examination of that book can you tell how the stock of the Travis Glass Co. stood on August 28, 1919?

Answer. I can tell you the date of the issue of the certificates prior to August 28, 1919.

Question. Is it not a fact that on August 28, 1919, all the outstanding stock of the Travis Glass Co. was deposited with the Guaranty Trust Co. as collateral security for three notes?

Answer. Well, no; it was special collateral security for one note. I assume that it was all transferred. I was so informed, and so believed that at the time, but personally I did not touch it or check it. But it was checked, and I was told that it was transferred.

Question. You do not know about that, of your own knowledge?

Answer. No; not from personal examination I do not. The Guaranty Trust Co. told me they had it, and Mr. Axton checked it over and it was turned over in his presence.

Question. Do you know what disposition was made of the stock of the Travis Glass Co. after August 28, 1919?

Answer. Certain of it was issued to different people. One share was issued to me on the 5th day of December.

Question. Call off that clearly, the number of the certificates, the date, and the amount of the stock that was issued to you after August 28, 1919?

Answer. Certificate No. 39, one share of stock, issued December 5, 1919, to F. E. Baldwin.

Certificate No. 40, one share of stock issued to R. W. Niver, Elmira, N. Y., dated December 5, 1919.

Certificate No. 41, one share of stock issued to Frank L. Collins, Elmira, N. Y., dated December 5, 1919.

Certificate No. 42, one share of stock issued to P. M. Robinson, Clarksburg, W. Va., dated December 5, 1919.

Certificate No. 43, one share of stock issued to H. E. Travis, Clarksburg, W. Va., dated December 5, 1919.

Certificate No. 44, 495 shares of stock issued to H. C. Mandeville, Elmira, N. Y., December 5, 1919.

Afterwards that 495 shares, certificate No. 45, was issued to F. E. Baldwin, dated January 5, 1920, and was transferred from H. C. Mandeville.

Question. And those entries you have just read are the last record of stock transactions of the Travis Glass Co.?

Answer. In this book; yes, sir.

Question. When the stock of the Travis Glass Co. was transferred on December 5, 1919 to the parties whose names you have called, what consideration did they pay for that stock?

Answer. None.

Question (handing another book to witness). In August, 1919, when you and Mr. Libbey and Mr. Ford made the three notes at the Guaranty Trust Co., the stock of the Essex company was also left with the Guaranty Trust Co. as collateral security, was it not?

Answer. Yes, sir; for one of those notes.

Question. And thereafter, the stock in the Essex Glass Co. was sent by the Guaranty Trust Co. to Elmira, N. Y., and a transfer in the stock of the Essex Glass Co. then made, was it not?

Answer. Yes, sir.

Question. Have you the stock book of the Essex Glass Co. in your hands?

Answer. I have.

Question. Examine that book, and tell us how the stock of the Essex Glass Co. was transferred at Elmira, N. Y., in 1919?

Answer. Certificate No. 78, one share of stock issued to F. E. Baldwin, December 8, 1919.

Certificate No. 79, one share of stock issued to R. W. Niver, December , 1919.

Certificate No. 80, one share of stock issued to F. L. Collins, December 8, 1919.

Certificate No. 81, one share of stock issued to R. M. Lamb, December 8, 1919.

Certificate No. 82, one share of stock issued to Charles M. Tigner, December 8, 1919.

Certificate No. 83, one share of stock issued to Watson Pickard, December 8, 1919.

Certificate No. 84, 994 shares issued to H. C. Mandeville, December 8, 1919.

Certificate No. 85, 994 shares issued to Frank L. Collins, January 5, 1920, transferred from H. C. Mandeville.

Question. The transfers made on December 8, 1919, to the persons whose names you have just read, included all the outstanding stock of the Essex Glass Co. at that time?

Answer. So I understood; yes, sir.

Question. What consideration did those parties pay for the stock of the Essex Glass Co. which was transferred to them?

Answer. None; no consideration. Of course, I am stating that, but I do not know. Mr. Mandeville might have paid for those 994 shares.

Question. You did not pay anything for the stock in any of the companies issued to you?

Answer. No; I did not; and nothing was paid, as I understand it.

Question (handing book to witness). The stock of the Lockport Glass Co. on August 28, 1919, was delivered to the Guaranty Trust Co. as collateral security for one of the notes made by you, Mr. Libbey, or Mr. Ford, as was the other stock, was it not?

Answer. Yes, sir.

Question. Have you the stock book of the Lockport Glass Co. with you?

Answer. I have it in my hand.

Question. Was the stock of the Lockport Glass Co. sent to Elmira, N. Y., by the Guaranty Trust Co. in the month of December, 1919, for transfer or reissue?

Answer. I assume so; yes, sir.

Question. Can you look at the stock book and tell how the stock was reissued at Elmira, N. Y., in December, 1919?

Answer. Certificate No. 107, dated December 6, 1919, F. E. Baldwin, one share.

Certificate No. 108, one share, December 6, 1919, H. C. Mandeville.

Certificate No. 109, one share, December 6, 1919, F. L. Collins.

Certificate No. 110, one share, December 6, 1919, issued to R. W. Niver.

Each of those persons reside in Elmira, N. Y.

Certificate No. 111, one share, December 6, 1919, issued to R. P. Luce, Lockport.

Certificate No. 112, one share, December 6, 1919, issued to W. E. McComb.

Certificate No. 113, one share, December 6, 1919, to R. S. Keep, Lockport.

Certificate No. 114, 1,760 shares, dated December 6, 1919, to H. C. Mandeville, Elmira, N. Y.

Question. The certificates, the numbers of which you have just called, as issued to the parties whose names you have read, included all the stock of the Lockport Glass Co. in December, 1919, did it?

Answer. I so understood it; yes, sir.

Question. And all the stock of the Lockport Glass Co. was transferred or reissued at Elmira, in December, 1919, to the persons whose names you read?

A. Yes, sir.

Question. What consideration did those persons pay for the stock issued to them in the Lockport Glass Co.?

Answer. None; no consideration, I understand it.

Question. Have you the stock book of the Woodbury Glass Co. accessible?

Answer. Yes, sir. [Witness produces book.]

Question. On August 28, 1919, the stock of the Woodbury Glass Co. was deposited with the Guaranty Trust Co. at New York as collateral security for the notes or one of the notes made by you, Mr. Libbey, or Mr. Ford on that date, was it not?

Answer. Yes, sir.

Question. And the stock of the Woodbury Glass Co. remained with the Guaranty Trust Co. as collateral security until it also was sent to Elmira, N. Y., for transfer or reissue?

Answer. Well, it remained with them. Even then, it was in their possession.

Question. But it was sent to either their agent or representative at Elmira, N. Y.?

Answer. Yes, sir.

Question. Do you recall the name of that agent or representative?

Answer. Second National Bank, I believe.

Question. Can you examine the stock book of the Woodbury Glass Co. and tell how the stock was reissued at Elmira, in December, 1919?

Answer. Yes, sir.

Question. Please do so.

Answer. Certificate No. 85, one share, issued to F. E. Baldwin, December 8, 1919.

Certificate No. 86, one share, issued to George H. Clark; his address was Winchester, Ind.—it does not appear here.

Certificate No. 87, one share, issued to F. L. Collins, of Elmira, N. Y.—that does not appear here, but I know his address—December 8, 1919.

Certificate No. 88, one share, issued to L. M. Kimmel, of Winchester, Ind., December 8, 1919.

Certificate No. 89, one share, issued to R. W. Niver, Elmira, N. Y., December 8, 1919.

Certificate No. 90, 1,995 shares, issued to H. C. Mandeville, December 8, 1919. Mr. Mandeville is of Elmira.

Certificate No. 91, 1,995 shares, issued to F. E. Baldwin—myself—Elmira, N. Y., January 5, 1920, of the stock issued to Mr. Mandeville, and his certificate was canceled.

Question. The certificates whose numbers you have just called show that in December, 1919, all the stock of the Woodbury Glass Co. was issued to the persons whose names you called?

Answer. Yes, sir; according to the records.

Question. What consideration did those persons pay for that stock issued to them in the Woodbury Glass Co?

Answer. Nothing; no consideration.

Question. After the stock in the Travis, Essex, Lockport, and Woodbury Glass Cos. had been reissued, as you have just detailed, at Elmira, N. Y., what disposition was made of the stock?

Answer. As far as we were concerned, it was left with the Second National Bank and they sent it back to the Guaranty Trust Co.

Question. As a matter of fact, it was returned to the Guaranty Trust Co.?

Answer. Sure; it was in their possession all the time.

Question. And the Guaranty Trust Co. continued to hold the stock of the Travis, Essex, Lockport, and Woodbury Glass Cos. as collateral security for the three notes until the three notes were paid?

Answer. Yes, sir.

Question. When were the notes to the Guaranty Trust Co. paid?

Answer. I believe it was the Saturday before the 4th of July.

Question. Of what year?

Answer. 1920. I swore once before, however, it was in August, but I was mistaken.

Question. When the notes to the Guaranty Trust Co. were paid, what disposition was made of the stock in the four companies?

Answer. You mean the actual physical disposition?

Question. Yes, sir; when the notes were paid?

Answer. I think it was turned over to Mr. Mandeville. It surely was not turned over to me.

Question. It was at least surrendered by the Guranty Trust Co.?

Answer. Yes, sir.

Question. The stock of the Woodbury Glass Co. stands to-day as it stood in December, 1919, with the exception of the reissue to you in January, 1920, of the stock issued to Mr. Mandeville?

Answer. Yes, sir.

Question. And the Thatcher Manufacturing Co. owns the stock of the Woodbury Glass Co., does it not?

Answer. It does.

Question. The particular individuals in whose name it stands do not really own the stock, do they?

Answer. No, sir.

Question. They paid nothing for it, did they?

Answer. No, sir.

Question. The three notes to the Guaranty Trust Co. made by you, Mr. Libbey and Mr. Ford were paid from the proceeds of a bond issue of the Thatcher Manufacturing Co., were they not?

Answer. Yes, sir.

Question. And when those notes were so paid, the stock of the four companies held by the Guaranty Trust Co. as collateral security was surrendered and given to you or Mr. Mandeville?

Answer. Given to Mr. Mandeville.

Question. The stock of the Woodbury Glass Co. stands to-day in the same position or record that it stood when the three notes to the Guaranty Trust Co. were paid?

Answer. Yes, sir.

Question. And the Thatcher Manufacturing Co. owns all the stock of the Woodbury Glass Co.?

Answer. Yes, sir.

Question. The Thatcher Manufacturing Co. acquired the capital stock of the Woodbury Glass Co. by paying the three notes at the Guaranty Trust Co., did it not?

Answer. I think, as a matter of law, that that would follow, but that is a matter of law, isn't it? You know I am not a lawyer now.

Question. It acquired the stock, though, as a matter of fact, did it not?

Answer. We claim that the Thatcher Manufacturing Co. owns that stock, Colonel Brindley.

Question. What became of the Travis, Essex, and Lockport companies after the three notes to the Guaranty Trust Co. were paid?

Answer. You mean the stock?

Question. No, sir. Mr. Reporter, will you repeat the question?

(The question was repeated by the reporter as above recorded.)

Answer. Prior to the payment of those notes, the physical assets of those three companies were transferred to the Thatcher Manufacturing Co.

Question. All the assets of the Travis, Essex, and Lockport companies were transferred and conveyed to the Thatcher Manufacturing Co., were they?

Answer. Yes, sir.

Question. And what disposition, then, was made of the companies?

Answer. Afterwards—after the notes were paid, the companies were dissolved; the corporations were dissolved.

Question. And they are not now in existence?

Answer. They are not; no, sir.

Question. The only company of the four now in existence is the Woodbury Glass Co.?

Answer. Yes, sir.

Question. The Travis, Essex, and Lockport Glass Cos. at the time of the acquisition of the stock in August, 1919, were engaged in manufacturing milk bottles, were they not?

Answer. Yes, sir.

Question. In competition with the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. You knew that at the time of the acquisition of the stock in August, 1919, did you?

Answer. Certainly.

Question. You did not know at that time, in August, 1919, that the Woodbury Glass Co. was making and selling milk bottles, did you?

Answer. I thought I knew that they were not making and selling milk bottles at that time; yes, sir.

Question. And the situation was different between the Woodbury Glass Co. and the Travis, Essex, and Lockport Glass Cos., so far as your information went?

Answer. Yes, sir.

Question. The Travis, Essex, and Lockport companies were competitors of the Thatcher Manufacturing Co., were they not?

Answer. They were.

Question. You did not think the Woodbury company was a competitor of the Thatcher Manufacturing Co.?

Answer. I thought I knew that it was not.

Question. And after the payment of the three notes to the Guaranty Trust Co. from the proceeds of the bond issue by the Thatcher Manufacturing Co., the Travis, Essex, and Lockport companies were dissolved?

Answer. Yes, sir.

Question. But the Woodbury Glass Co. was not dissolved.

Answer. No, sir.

Question. The bond issue made by the Thatcher Manufacturing Co., about which you have spoken, was secured by a mortgage given by the Thatcher Manufacturing Co. on all its property and assets, including all the property and assets of the Travis, Essex, and Lockport companies, was it not?

Answer. They did not have any assets at that time.

Question. Then it included the property of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. Which included also the former assets and property of the Travis, Essex, and the Lockport companies?

Answer. Yes, sir.

Question. And that mortgage also conveyed and carried as security for the bond issue the capital stock of the Woodbury Glass Co., I believe?

Answer. I believe so; yes, sir. Of course, the mortgage speaks for itself.

Question. You mentioned a contract made by you and Mr. Libbey and Mr. Ford, after the making of the three notes to the Guaranty Trust Co. in August, 1919.

Answer. In a prior examination; yes, sir.

Question. You recall that contract, do you not?

Answer. I remember the contract; yes, sir.

Question. That was made by you and Mr. Libbey and Mr. Ford and the Sterling Glass Co.?

Answer. Yes, sir.

Question. The stock in all these four companies were sent to Elmira, N. Y., and the then outstanding stock canceled and all stock

reissued to other parties in the first part of December, 1919, was it not?

Answer. Yes, sir; I believe the dates are December 8, 1919.

Question. December 8, 1919, was the last date on which that stock was reissued?

Answer. I think so.

Question. You named or nominated the persons to whom that stock should be issued, I believe?

Answer. Yes, sir; I did.

Question. And the larger part of the stock in all four companies, in every instance, was issued to Mr. H. C. Mandeville, Mr. F. L. Collins and Mr. R. W. Niver, was it not?

Answer. Yes, sir.

Question. All the stock in the four companies was issued to you, Mr. Mandeville, Mr. Collins and Mr. Niver, except one share to one or two other persons for the purpose of qualifying directors and officers, was it not?

Answer. Two or three other persons in each case.

Question. And only one share of stock issued to other persons in those instances?

Answer. Yes, sir. That was so we could have a directors' meeting at that place, by only having one of us go down from Elmira.

Question. And you and Mr. Mandeville and Mr. Collins and Mr. Niver are stockholders and officers and directors or employees of the Thatcher Manufacturing Co., are you not?

Answer. Yes.

Question. And were so in December, 1919?

Answer. Yes. Mr. Collins is an employee; he is not a director.

Question. But an employee of the Thatcher Manufacturing Co.?

Answer. Yes.

Question. And is yet in the office of the Thatcher Manufacturing Co.?

Answer. He has been for 14 years, I believe.

Question. And you have stated that the stock was issued to these persons who were nominated by you?

Answer. Yes, sir.

Question. The stock in the four companies was reissued to the four persons nominated by you prior to the time that you received the notice from Mr. Libbey and Mr. Ford that they withdrew from the transaction?

Answer. Yes, sir. These companies were all being run as separate companies.

Question. And being directed from where?

Answer. Being directed by me from Elmira.

Question. New York?

Answer. Yes, sir.

Question. From the office of the Thatcher Manufacturing Co.?

Answer. My office is there; yes, sir.

Question. When did you first visit the plant of the Woodbury Glass Co. after the transaction on August 28, 1919?

Answer. I can not tell you; some little time afterward.

Question. Did you go there prior to December, 1919?

Answer. No, sir; I think not. I think Mr. Niver was out there prior to that.

Question. Did you send him out there?

Answer. I did. I am not sure that he did, but I think that he did.

Question. The acquisition of the stock in the Travis, Essex, Lockport, and Woodbury Glass companies was all acquired in one transaction, was it not?

Answer. Yes, sir.

Question. The three notes given by you, Mr. Libbey and Mr. Ford to the Guaranty Trust Co. in August, 1919, were all paid by one transaction, were they not?

Answer. Yes, sir.

Question. And those three notes to the Guaranty Trust Co. were paid by the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And by the payment of those three notes, the Thatcher Manufacturing Co. secured or acquired the stock of the Woodbury Glass Co.

Mr. SMITH. Just a moment. Colonel, would you mind leaving out the word "acquired"? I do not like to have the witness forced on that particular word. I do not like to have the thing forced in such a way. That calls for a conclusion on his part.

By Mr. BRINDLEY:

Question. All right; just let that go. I will ask this question: You have stated, and you are willing to repeat, that the Thatcher Manufacturing Co. owns all the capital stock of the Woodbury Glass Co., are you not?

Answer. Yes, sir.

Question. The Thatcher Manufacturing Co. did acquire all the outstanding stock of the Woodbury Glass Co.?

Answer. That is a conclusion of law that you are a better judge and the commission than I am.

Question. If you object to answering that way, I will just ask you this: By the transactions you have detailed, the Thatcher Manufacturing Co. became the owner of the capital stock of the Woodbury Glass Co., did it not?

Answer. I think it did.

Question. And the capital stock of the Travis, Essex, and the Lockport Glass Cos. were included in the transaction in which the stock of the Woodbury Glass Co. was included?

Answer. It was all one transaction.

Question. And the stock of the four companies was all included in the transaction?

Answer. We paid the notes, and they turned the stock over.

Question. Of all the four companies?

Answer. Yes, sir.

Question. To you and Mr. Mandeville?

Answer. To Mr. Mandeville.

Mr. BRINDLEY. I believe that is all.

Redirect examination by Mr. SMITH:

Question. Was there ever a share of any of the stocks of these four companies that stood in the name of the Thatcher Manufacturing Co. on the records of the four companies?

Answer. No, sir; I assumed I would have testified without looking that the Woodbury stock had been transferred to the Thatcher Manufacturing Co.

Question. But your examination of the books shows it is not so?

Answer. Yes, sir.

Question. Your examination of the books which was made in response to Colonel Brindley's question shows that not a share of any one of those companies stood on the books in the name of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. Therefore the title which you refer to as the ownership by the Thatcher company is not a record title; it is an equitable title, I take it?

Answer. Yes, sir.

Question. It is your conclusion of the equitable rights derived from certain transactions?

Answer. Yes, sir; as a matter of equity they were entitled to the stock.

Question. It is your conclusion as to the stock?

Answer. Yes, sir.

Question. You said that Mr. George Clark told you and also Mr. Axton that the Woodbury had stopped making milk bottles?

Answer. Yes, sir.

Question. Do you remember when they told you that?

Answer. Mr. Clark told me that in a meeting of the Milk Bottle Manufacturers' Exchange.

Question. Was it before August 28, 1919?

Answer. It was before August 28, 1919.

Question. How long before? Have you any idea?

Mr. BRINDLEY. I do not want to be technical, your Honor, or interpose needless objections. We have both been very liberal in this examination. I believe I will object to too much hearsay testimony.

Mr. SMITH. That is not hearsay.

Examiner AVERILL. Gentlemen, the objection is overruled. The witness has previously testified to certain things, and I think that counsel has a right to go into them to see upon what the witness has based the testimony as previously given.

By Mr. SMITH:

Question. What was the official relation of Mr. Clark to the Woodbury company?

Answer. He was vice president, I believe, and treasurer.

Question. Up to the time of his death?

Answer. Yes; he was not treasurer up to the time of his death; he was vice president up to the time of his death.

Question. Do you remember about when he made this statement to you about the stoppage of the manufacture of milk bottles?

Answer. I know it was prior to August 28 in a meeting of the Milk Bottle Manufacturers' Exchange. He had told me several times of this contract we had for this feeder months before, and that they were going to stop manufacturing milk bottles. It must have

been the early part of August that he told me that they had stopped manufacturing milk bottles.

Question. Do you remember when Mr. Axton made the statement?

Answer. He made the statement to me during his negotiations. He came to see me several times.

Question. Prior to August 28, 1919?

Answer. Prior to August 28, 1919.

Mr. SMITH. That is all.

Recross-examination by Mr. BRINDLEY:

Question. You heard Mr. Kimmel testify to-day that the Woodbury Glass Co. made milk bottles in 1919, did you not?

Answer. Yes, sir.

Question. You also heard him testify that they made milk bottles in 1918, did you not?

Answer. Yes, sir; and I knew that they were making them.

Question. And did you know that they were making them in 1919?

Answer. I knew that they were in the early part of 1919, the very early part.

Question. You are president of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And have been president for how long?

Answer. Twenty-two years; nearly twenty-three.

Question. You made a report to the directors and stockholders of the Thatcher Manufacturing Co., dated February 18, 1920, did you not?

Answer. Yes, sir.

Question. Is that a copy of the report [handing paper to witness]?

Answer. I assume it is. I have not compared it, but I assume it is the copy of the report. This is Exhibit K to the stipulation signed by W. H. Fuller and Thatcher Manufacturing Co., by Herbert Knox Smith.

Question. The copy to which you referred is Exhibit K to the stipulation of facts entered into between the chief counsel of the Federal Trade Commission and the respondent?

Answer. Yes, sir.

Question. In your report to the directors and stockholders of the Thatcher Manufacturing Co., you made certain statements regarding the transaction in connection with the stock of the companies named?

Answer. Yes, sir.

Question. Will you please read for the examiner so that the reporter may copy into the record that part of your annual report beginning on page 3 of Exhibit K?

Answer. It is a part of the record already.

Question. Yes, sir; but I would like to have you read it again.

Answer (reading). "During the years starting, I believe, in April, negotiations were held in regard to the merging of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the Woodbury Glass Company, and the purchasing of the Hartford-Fairmont feeder and milk-bottle machine and milk bottle business of the J. T. & A. Hamilton Company. These parties, except the Woodbury Glass Company held the exclusive licenses for the Hartford-Fairmont feeder and machines for the manufacture of

milk bottles in the U. S. The Woodbury Glass Company had a non exclusive license for the manufacture of condiment bottles. After several months' negotiations and interviews with the Owens Bottle Machine Company, and obtaining their consent and advice that we purchase these companies and thereby obtain the rights of the Hartford-Fairmont feeders, upon the 29th day of August, we purchased the capital stock of the companies named and the Hartford-Fairmont feeder and machines and milk-bottle business of the J. T. & A. Hamilton Company.

"The money was borrowed for the making of this purchase of the Guaranty Trust Company of New York. We were assisted in obtaining same by E. D. Libbey, president of the Owens Bottle Company and Mr. William Ford, a large stockholder in the Owens company.

"We conducted these companies under their own management until the first of January. The first of January we brought the entire business to Elmira, and the same is being now managed and directed by Thatcher Manufacturing Company."

Question. You made the report from which you have just read an extract?

Answer. I did; yes, sir.

Question. And you made it shortly after the stock in the four companies had been sent to Elmira and reissued, as you have heretofore detailed?

Answer. I made it in February, and that was done in December.

Question. Preceding?

Answer. Preceding.

Question. And while the matter was pretty fresh on your mind?

Answer. The matter was reasonably fresh on my mind; yes, sir.

Question. And you made these statements in your annual report prior to any proceedings against the Thatcher Manufacturing Co. by the Federal Trade Commission?

Answer. Certainly.

Question. And before you had any idea that the Federal Trade Commission would take any action regarding this stock transaction?

Answer. Certainly.

Mr. BRINDLEY. I believe that is all.

Mr. SMITH. That is all.

(Witness excused.)

H. C. MANDEVILLE, recalled, having been previously sworn testified further as follows:

Direct examination by Mr. SMITH:

Question. When Mr. Libby, December 11, 1919, withdrew from the August 28, 1919, contract, you were aware that the liability on the notes to the Guaranty Trust Co. of approximately $1,800,000 had fallen personally upon Mr. Baldwin?

Answer. Yes, sir.

Question. You were then a director of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. You were also counsel for that company?

Answer. Yes, sir.

Question. Will you tell me what action you then took to relieve Mr. Baldwin of that liability? Whom did you see? What did you do?

Answer. It was my duty to try to raise the money so that Mr. Baldwin could pay the notes. I undertook to try to finance the payment of the notes. I can not give you the exact order in which I did these different events.

Question. It does not make any difference. All of them were done before the bond issue?

Answer. I saw the Guaranty Trust Co. bond department, and I tried to make some plan with them by which they would undertake an issue of bonds on the four companies, and I was referred by them to different officials in the company and went from pillar to post, trying to get them to undertake some financing.

In the process of that, I prepared a set of figures, consolidated balance sheets of the four companies, consolidated earnings experience of the four companies.

Question. When you say the four companies, you mean the Travis, Lockport, Essex, and Woodbury?

Answer. Yes. I got up the history of the different companies, and furnished them what information I could. They told me that we had plenty of time, that it was a very unfavorable time to try to do any financing, that the market was very bad, that money was very scarce and that the history of the companies as to earnings was not satisfactory, and that we had better wait until later, and that at the proper time, they would let me know when to undertake the financing, and that in the meantime I could wait, perfectly secure because I had ample time.

But I felt very much worried over the situation, and I went out to get others to see if they would finance. I went to Campbell, Heath & Co., who were bankers at 5 Nassau Street, New York. I took up with them the question of financing, but previous to that and before I went to the Guaranty Trust Co. I went to see Mr. Libbey at the Plaza Hotel, New York City, and presented to him a plan that I had by which we would put the four companies together and have an issue of a first preferred stock of a million dollars and of a second preferred stock of an equal amount, with sinking fund provision for the retirement of the preferred, and asked him if he, under the circumstances, would not help us finance by taking that second issue of stock.

He was very decidely opposed to it; said that he was surprised that I should even suggest it to him, and refused to do it.

Campbell, Heath & Co. had been familiar with these four companies before August 28 by reason of Mr. Axton having been to them to help him finance, and at their suggestion I made up different sets of figures, that is, the figures were the same, but arranged in different methods that they wanted, that they thought would be attractive.

After long negotiation with them they concluded that they could not handle it.

In the process of those negotiations I met a man by the name of Mr. Henshaw—I do not recall his initials. He was rather an outside man—I did not know just what his connection was—but he thought he would be able to help me finance it.

I also went to Boston to see a bond house in Boston by the name of Baker, Ayling & Co. because I knew them. I went over the matter with them, and they told me that they could not undertake it at the time; that the market was in such condition and it was so hard to sell bonds and to get money, that they could not take it up.

I also had some negotiations with a bond house in Canton, Ohio.

Question. Do you remember their name?

Answer. I think it was the Canton Securities Co.; but they said that they, together with their New York connections, could handle it, and were particularly able to do it because they were an Ohio concern, and if we would make it into an Ohio company, if we would put these companies together into an Ohio company, there was a market in Ohio for Ohio preferred stocks.

I met them at Toledo once with Mr. Baldwin, and they came to Elmira and spent several days, and I made a new arrangement of the same figures for them and got out a lot of data that they wanted.

I also, through Campbell, Heath & Co. and through the Guaranty Trust Co., got in touch with a bond house in New York City named Eldridge & Co. It was a new house that had come to New York, and I felt that because they had not any issues, that they might be interested in this issue as their initial venture, and I was recommended to them by the Guaranty Trust Co.

By that time I had accumulated a large portfolio of different suggestions as to financing, and they took those papers and wanted to consider them, particularly one of their leading men, who lived in St. Louis.

Then I got in touch with the bond house of Bonbright & Co. in the Equitable Building, New York. I met various different men in that organization in the department that did the investigating. Finally I met Mr. Lockett, who was the man in authority.

During this time I had also talked with Blodgett & Co., and I was not getting anywhere with it. I could not get it down to any real plan. But finally Mr. Lockett told me that if I could get some one else, some other house that would join with them, that they would go in for one million dollars of a two million dollar issue.

By that time I had abandoned the issuance of preferred stock, finding that the market would not take preferred stock, and that the only chance was to sell a direct issue.

Mr. Lockett did not commit himself in any way, but I think more because of my importunity than anything else, he said that if I could get some one else to go in with them so that they would not take the whole load, he would consider a million dollars.

I then got in touch with the firm of Hemphill, Noyes & Co., 37 Wall Street, and Mr. Griffiths of that firm took all my papers and studied them and said that he would have to have still a different set-up of it, that we would have to reorganize the whole plan, and after a long negotiation with him, he said that he would go along with Bonbright & Co. for $1,000,000 upon a certain definite plan.

Then we had a draft of that plan prepared, which matured into the bankers' agreement that is in evidence.

Question. About how long did this whole process take?

Answer. It took all winter.

Question. The majority of your time?

Answer. Yes, sir.

Question. From December 11, 1919, to somewhere in April, 1920?

Answer. Yes, sir.

Question. And as you stated to me, you saw some seven or eight concerns or individuals on this matter?

Answer. Yes, sir; I had to be very careful about it because I could not have it rejected by any one concern. If I once was turned down, then I would have to tell the other firms that somebody had rejected it; so I had to go carefully and not get into a position where anybody said "No" to me.

But when I found that they were not interested, I withdrew from the negotiations.

I also talked with the Chase Securities Co., which is an adjunct of the Chase Bank.

Question. Was Mr. Baldwin frequently with you in New York on that business?

Answer. Yes, sir. He did not go with me to the different negotiations, but was here and I would confer with him at night and try again the next morning.

Question. Mr. Baldwin testified this morning that there was no conference agreement or understanding of any sort which would have allowed him to command the Thatcher company to take over this liability. Is that your understanding?

Answer. Yes, sir; I talked with some of the directors of the Thatcher company about it.

Question. What was the nature of that discussion?

Answer. The particular discussion that I have in mind was with Mr. S. G. H. Turner, who was a director and president of the Second National Bank, and represented in the board the J. S. Fassett interest in the Thatcher company. He said that it had been discussed among the directors, and that it was impossible for the Thatcher company to take over these companies because it would swamp them if it did.

Question. So both you and Mr. Baldwin laid aside the possibility or the propriety of having the Thatcher company assume this liability?

Answer. Yes, sir; because we could not tell how to meet it, and directly we found it could be financed, we took it up again with the Thatcher company.

Question. Mr. Baldwin also testified that there was no contract, understanding, or agreement of any sort by virtue of which the Thatcher company could have demanded the stock of the four companies from Mr. Baldwin. Is that your understanding?

Answer. Yes, sir.

Question. You have heard Mr. Baldwin's statement of the original plan which he and Mr. Libbey had worked out. Were you also aware of the nature of that plan?

Answer. Yes, sir; I was present at most of the interviews.

Question. And his statement of it agrees with your understanding?

Answer. Yes ,sir.

Question (handing paper to witness). Will you examine that document and tell me what it is?

Answer. This is an assignment of the license of the Hartford-Fairmont Co. with the Travis Glass Co. It is a three-party agreement between the Travis Glass Co., Hartford-Fairmont Co., and the Thatcher Manufacturing Co.

Question. Will you read that assignment, please?

Answer. The title is "Assignment of license."

"Memorandum of an agreement made as of first day of June, 1920, by and between Hartford-Fairmont Company of Canajoharie, New York, and Travis Glass Company of Clarksburg, West Virginia, and Thatcher Manufacturing Company of Elmira, New York.

"Witnesseth: That whereas the Travis Glass Company is the owner of a certain license and lease agreement entitled 'License and lease No. 7' from Hartford-Fairmont Company to Travis Glass Company dated December 16th, 1919, licensee's plant at Weston, West Virginia:

"And whereas the said license contains a prohibition against assignment:

"And whereas the said Thatcher Manufacturing Company desire to acquire the said license;

"Now, therefore, it is hereby agreed between the parties hereto, each in consideration of the sum of $1.00 and other valuable considerations by the other in hand paid, receipt of which is hereby acknowledged, and in further consideration of the convenants and others herein contained, as follows, namely:

"Hartford-Fairmont Company hereby consents to the assignment by the Travis Glass Company to the Thatcher Manufacturing Company of the aforementioned license, the Travis Glass Company hereby assigns the aforementioned license to the Thatcher Manufacturing Company and the Thatcher Manufacturing Company hereby assumes the said license, subject to all of the terms, conditions, and obligations thereof, as fully and completely as if its name appeared there in place of the name of the Travis Glass Company."

Then there follows the licensor's affidavit, the licensee's affidavit, and the assignee's affidavit.

By Examiner AVERILL:

Question. What date is that?

Answer. June 1, 1920.

Examiner AVERILL. Who executed it on behalf of the Travis company?

Mr. SMITH. It is executed on behalf of the Travis company by F. E. Baldwin, president, and in the presence of Mr. Collins and Mr. Hastings.

By Mr. SMITH:

Question. I show you another document [handing paper to witness]. Will you tell me what that is?

Answer. That is a consent by the Hartford-Fairmont Co. to the assignment of license and lease agreement No. 4 to the Thatcher Manufacturing Co. by the Travis Glass Co.

Question. Of what date?

Answer. The 1st of June, 1920.

Question. It is similar to the one you have just read?

Answer. Yes, sir.

Question. I show you another document [handing paper to witness]. What is that?

Answer. That is a consent by the Hartford-Fairmont Co. to assignment of license and lease agreement No. 5 to the Thatcher Manufacturing Co. by the Travis Glass Co.

Question. Of what date?

Answer. June 1, 1920.

Question. Substantially similar?

Answer. The same as the other that I read.

Question. I show you another one [handing paper to witness]. What is that?

Answer. It is a consent by the Hartford-Fairmont Co. to assignment of license and lease No. 11 to Thatcher Manufacturing Co. by Essex Glass Co., dated the 1st day of June, 1920.

Question. I show you another one [handing paper to witness]. What is that?

Answer. That is a consent by the Hartford-Fairmont Co. to assignment of license and lease agreement No. 9 to Thatcher Manufacturing Co. by Essex Glass Co., dated June 1, 1920.

Question. Another one [handing paper to witness].

Answer. This is a consent by the Hartford-Fairmont Co. to assignment of license and lease agreement No. 10 to the Thatcher Manufacturing Co. by Essex Glass Co., dated June 1, 1920.

Question. Another [handing paper to witness].

Answer. That is a consent by the Hartford-Fairmont Co. to assignment of license and lease agreement No. 3 to the Thatcher Manufacturing Co. by the Essex Glass Co., dated June 1, 1920.

Question. Another [handing paper to witness].

Answer. Consent by the Hartford-Fairmont Co. to assignment of license and lease agreement No. 1 to the Thatcher Manufacturing Co. by Lockport Glass Co., dated June 1, 1920.

Question. Another [handing paper to witness].

Answer. That is a consent by the Hartford-Fairmont Co. to assignment of license and lease agreement No. 5 to the Thatcher Manufacturing Co. by Lockport Glass Co., dated June 1, 1920.

Question. Another [handing paper to witness].

Answer. That is a consent by the Hartford-Fairmont Co. to assignment of license and lease agreement No. 8 to the Thatcher Manufacturing Co. by Lockport Glass Co., dated June 1, 1920.

Question. Another [handing paper to witness].

Answer. That is a consent by the Hartford-Fairmont Co. to assignment of license and lease agreement No. 2 to the Thatcher Manufacturing Co. by J. T. & A. Hamilton Co., dated June 1, 1920.

Question. Will you count those assignments?

Answer. These are all in the same form as the one I read. There are 11 in all.

Question. Those assignments cover all the licenses of the Hartford-Fairmont machines to these various companies of milk bottle units that were outstanding on that date?

Answer. Yes, sir.

There were only 11 machines altogether of the milk bottle units?

Answer. Yes, sir; only 11 units.

Question. You do not happen to remember the date of that Linton & Scott contract?

Answer. No, sir; it was before August 28, 1919, because it was in existence at the time we took over the company. I have seen the contract and have a copy of it at home, but I do not remember the date.

Mr. SMITH. That is all.

Cross-examination by Mr. BRINDLEY:

Question. Are you still vice president of the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. And also its chief counsel?

Answer. Yes, sir.

Question. What is the largest producer of milk bottles in the United States?

Answer. Thatcher Manufacturing Co.

Question. The acquisition by the Thatcher Manufacturing Co. of the rights, assets, and properties of the Travis, Essex, and the Lockport Class Cos. put the Thatcher Manufacturing Co. in a dominating position in the United States in the manufacture and sale of milk bottles, did it not?

Answer. No; I should not say so. It made them the largest single producer.

Question. Producing more than all the other manufacturers of milk bottles in the United States, did it not?

Answer. Yes.

Question. As counsel for the Thatcher Manufacturing Co., you handled all the legal work in connection with the transactions involving the Travis, Essex, Lockport, and Woodbury Cos.?

Answer. Yes.

Question. The Travis, Essex, and Lockport Cos. have been dissolved, have they?

Answer. Yes, sir.

Question. Can you give us the dates of the dissolution of those three companies?

Answer. They are in the stipulation, I think. I can give you the dates now by refreshing my recollection.

The Sterling Glass Co. was dissolved September 9, 1920.

The Lockport Glass Co. was dissolved October 20, 1920.

The Essex Glass Co. was dissolved December 18, 1920.

The Travis Glass Co. was dissolved January 13, 1921.

Question. You were present at the Guaranty Trust Co. in New York City on the 28th day of August, 1919, when the three notes were made by Mr. Baldwin, Mr. Libbey, and Mr. Ford and the stock in the Travis, Essex, Lockport, and Woodbury Glass Cos. was acquired?

Answer. Yes, sir.

Question. Did you know at that time that the Woodbury Glass Co. was engaged in manufacturing and selling milk bottles?

Answer. No, I did not.

Question. Did you hear the testimony of Mr. Axton in this proceeding on November 3, 1922?

Answer. Yes, sir.

Question. And you heard his testimony in regard to the manufacture of milk bottles by the Woodbury Glass Co.?

Answer. Yes, sir; I did.

Question. Was that the first information you had concerning that matter?

Answer. Yes, sir.

Question. Until Mr. Axton testified on November 3, 1922, that the Woodbury Glass Co. had been making milk bottles, you did not know it?

Answer. I knew that they had made some in previous years, but I did not know that they were making any bottles at the time of the purchase of the stock by Mr. Baldwin.

Question. But at that time you did know that the Travis, Essex, and Lockport Cos. were making milk bottles?

Answer. Yes, sir.

Question. And that those three companies were making and selling milk bottles in competition with the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. But you did not know that, you say, so far as the Woodbury Glass Co. was concerned?

Answer. I did not; no, sir.

Question. After Mr. Baldwin, Mr. Libbey, and Mr. Ford executed the three notes to the Guaranty Trust Co., they entered into an agreement or contract dated August 28, 1919, with the Sterling Glass Co., did they not?

Answer. Yes, sir.

Question. And you drew that contract?

Answer. I did.

Question. And a copy of that contract is attached to the stipulation as Exhibit G?

Answer. Yes, sir.

Question. And at that time you were the president of the Sterling Glass Co.?

Answer. Yes, sir.

Question. That contract recited the making of the three notes in question and recited or described the collateral security attached to the three notes?

Answer. Yes, sir.

Question. It also recited in that contract that the "Sterling company undertakes to assume and does hereby assume all the liabilities of the other parties hereto upon the said notes, whether maker or indorser"?

Answer. Yes, sir.

Question. And the first provision, after the preliminary recitals in the contract, is that the "Sterling company hereby undertakes to and does hereby save the other parties to this agreement and each of them harmless from any and all liability or obligation by reason of the making or indorsing of any of the notes above recited, and upon the payment of the said notes, all of the collateral thereto shall become the property of the Sterling company?"

Answer. Yes, sir.

Question. What is the collateral referred to in that agreement?

Answer. It is the collateral that is recited in the recitals describing the notes and the collateral for each note.

Question. And it describes and refers to the shares of the capital stock of the Travis, Essex, Lockport, and Woodbury Glass Cos.?

Answer. Yes, sir; at that time I expected that the Sterling company would be expanded into the company that would take over the Hartford-Fairmont and whatever plan Mr. Libbey designated.

Question. At that time, as I believe you have heretofore testified, the immediate proposition involved was the acquiring and paying for the stock in the four companies?

Answer. Yes, sir.

Question. In August, 1919, and when the negotiations for the acquisition of the stock were in progress, the time given under the options held by Mr. Axton for the purchase of the stock was comparatively short?

Answer. Yes, sir.

Question. And so, when Mr. Baldwin, Mr. Ford, and Mr. Libbey agreed to take it over, the time in which you could perform was rather brief?

Answer. Yes; we had to work very fast.

Question. And, as a matter of fact, the transaction by which the stock in the four companies was first acquired was consummated in New York City on August 28, 1919, and that was only a few days before the option time expired?

Answer. Yes, sir.

Question. At New York, on August 28, 1919, the entire transactions and accomplishments were simply the purchase of the stock in the four companies and the making by Mr. Baldwin, Mr. Libbey, Mr. Ford, and the Sterling Glass Co. of the contract to which you have just referred?

Answer. Yes, sir; I wrote a letter right afterwards, when it was clear in my mind, setting down what took place.

Question. The details of it?

Answer. Yes, sir.

Question. And a copy of that letter is in the record as an exhibit to the stipulation?

Answer. Yes, sir.

Question. That was written shortly after you returned to Elmira?

Answer. Yes, sir.

Question. So at New York, on August 28, 1919, the stock in the Travis, Essex, Lockport, and Woodbury Co. was purchased from the owners of the stock from or by the proceeds of the three notes made by Mr. Baldwin, Mr. Libbey, and Mr. Ford, and the $500,000 belonging to the Sterling Glass Co.?

Answer. Yes, sir.

Question. And the stock of the four companies was left with the Guaranty Trust Co. as collateral security for the notes?

Answer. Yes; just as recited.

Question. Just as recited in the contract of August 28?

Answer. Yes, sir.

Question. And the stock in the four companies remained with the Guaranty Trust Co. as collateral security for the notes without any

change in record, title, rigistration or otherwise until in December, 1919, did it?

Answer. Yes, sir; it remained there, and I think was sent up to Elmira and certain transfers were made.

Question. In December, 1919, from December 5 to 8, inclusive, the stock in all four companies was reissued at Elmira to the parties named by Mr. Baldwin in his testimony?

Answer. Yes, sir. Then they were indorsed in blank by each of the owners and returned to the Guaranty Trust Co.

Question. Each certificate of stock in any of the four companies as issued to the stockholder named was indorsed in blank and returned to the Guaranty Trust Co.?

Answer. Yes, sir. The Second National was only the agent of the Guaranty as a matter of convenience, so that we could make the transfers in Elmira and not here.

Question. And the stock in all these companies was reissued at Elmira to persons nominated by Mr. Baldwin?

Answer. Yes, sir.

Question. And the stock, as you said, returned to the Guaranty Trust Co. and was held by the Guaranty Trust Co. as collateral security until the notes were paid?

Answer. Yes, sir.

Question. The notes to the Guaranty Trust Co. were finally paid during the year 1920 by you and Mr. Baldwin, were they not?

Answer. Well, we were both present at the time they were paid They were paid by the proceeds of the bond issue.

Question. The money with which these notes were paid was solely the money of the Thatcher Manufacturing Co. arising from the proceeds of its bond issue?

Answer. Yes, sir; and also from the sale of some stocks.

Question. From the sale of some stock?

Answer. Yes.

Question. Who was present at the Guaranty Trust Co. in addition to you and Mr. Baldwin when the notes were paid?

Answer. The representatives of the Guaranty with Mr. Hatcher and some of his assistants.

Question. Who represented the Guaranty Trust Co.?

Answer. Mr. Baldwin and myself and Mr. Decker, the secretary of the Thatcher company, and Mr. Beekman of Beekman, Menken & Griscom, and his assistant, representing the bankers.

Question. What do you mean by "representing the bankers"?

Answer. He was counsel for the bankers.

Question. Who were doing what in regard to the transaction?

Answer. Who were buying the bonds that we were issuing.

Question. The bankers whom you mentioned who were present at that time were those taking the Thatcher Manufacturing Co. bond issue and furnishing the money?

Answer. Yes, sir; it was all done around a table. The bonds were delivered and the checks were delivered in payment of it and deposited in the Guaranty Trust Co.

Question. At that transaction, when the three notes to the Guaranty Trust Co. were paid, the money as the proceeds of the bond issue was simply then and there delivered and simultaneously delivered to the Guaranty Trust Co. in payment of the notes?

Answer. They were deposited to the Thatcher Manufacturing Co.'s credit, and the money that resulted from the sale of the bonds was deposited to the credit of the Thatcher company, and the Thatcher company gave its check in payment of the note.

Question. It was deposited to the credit of the Thatcher Manufacturing Co. with the Guaranty Trust Co.?

Answer. With the Guaranty Trust Co.

Question. At that time and as a part of that transaction, what papers, documents, or written instruments did you have which you delivered at that time?

Answer. I delivered the mortgage and the bonds.

Question. You delivered, then, the mortgage executed by the Thatcher Manufacturing Co. to secure the bond issue?

Answer. Yes, sir; and I delivered the bonds executed by the Thatcher Manufacturing Co.

Question. Do you recall whether you had any other instruments or deeds with you that you delivered at the same time?

Answer. I do not think at that time, but before that time we had already delivered extracts of title and conveyances that had been approved by the counsel for the bankers.

Question. What do you mean by "conveyances"?

Answer. I mean a deed of the real estate of the three companies, Essex, Travis, and Lockport; a separate deed by each corporation and a bill of sale from each corporation of the personal property.

Then there were all the evidences of titles, abstracts, insurance policies, and certificates of payment of taxes, all the evidences of title that the trust company wanted in advance of satisfying the mortgage.

Question. Isn't it true, as a matter of fact, the deeds from the Travis, Essex, and Lockport companies were delivered that day at the Guaranty Trust Co. to the representatives of the bondholders and by them sent out to the appropriate place for reporting?

Answer. That is in substance true. The actual physical delivery had been made a few days before that to the counsel for the bankers.

Question. That is, your deeds had actually been signed?

Answer. And handed to them for their approval, but the physical delivery, I suppose, took place at the time of the one transaction.

Question. That was all one transaction?

Answer. Yes, sir.

Question. The representatives or agents of the bondholders had the deeds recorded in the appropriate place?

Answer. That was in the mortgage, that the trustee would see to the recording of the mortgage.

Question. And he did so?

Answer. Yes; he did see to the recording of the mortgage papers and the title papers.

Question. It was all one transaction?

Answer. All except the question of licenses. That had preceded that.

Question. And when the proceeds of the bond issue were deposited with the Guaranty Trust Co. and checks thereon given by the Thatcher Manufacturing Co. for the amount of the notes, the notes held by the Guaranty Trust Co. were surrendered?

Answer. Yes, sir.

Question. They were delivered to whom?

Answer. I think I took them. No, the notes themselves I did not take. Mr. Baldwin took the notes.

Question. Those were the three notes executed and endorsed by Mr. Baldwin, Mr. Libbey, and Mr. Ford on August 28, 1919?

Answer. Yes, sir.

Question. And what was done by the Guaranty Trust Co. with the collateral security when the notes were paid?

Answer. The stock of the Travis, Essex, and Lockport Cos. that were mentioned in the collateral were turned over to me, but the Woodbury stock, which comprised all the common capital stock of the Woodbury company, stayed with the trustee and were covered by the lien of the mortgage. The mortgage was not only a direct lien but a collateral trust.

Question. And the mortgage securing the Thatcher Manufacturing Co. bond issue included the stock of the Woodbury company; that is, the common stock?

Answer. Common stock; yes, sir.

Question. And that stock was left to the Guaranty Trust Co.?

Answer. Yes, sir; and is there now.

Question. What disposition has been made of that mortgage securing the bond issue?

Answer. It has been paid, as a matter of fact, and has not yet been discharged of record, but I am in process of getting it discharged now.

Question. For all practical purposes, the mortgage has been paid?

Answer. Yes, sir.

Question. The bonds secured by the mortgage have been called by the Thatcher Manufacturing Co.?

Answer. Been called, and the money deposited to pay them with. Under the terms of mortgage, I thereupon became entitled to a discharge, and the lien was transferred to the money instead of to the property.

Question. As a matter of fact, the Thatcher Manufacturing Co. now owns all the property, including that described in that mortgage, free from the lien of the mortgage?

Answer. Yes, sir; free from the actual lien. There is still a record lien, but it is only a question of procedure to have it discharged.

Question. To have it discharged of record?

Answer. Yes.

Question. What was the date when the notes to the Guaranty Trust Co. were paid?

Answer. It was on the Saturday before July 4, 1920.

Question. We are speaking of the three notes made by Mr. Baldwin, Mr. Libbey, and Mr. Ford.

Answer. Yes, sir.

Question. Will you please repeat the date?

Answer. The Saturday before July 4, 1920. I know we had a hard time to have them come down on Saturday to close. They wanted the holiday, and I wanted the notes paid.

Question. The contract of August 28, 1919, between Mr. Baldwin, Mr. Libbey, Mr. Ford, and the Sterling Glass Co., provided among

other things that upon the payment of the three notes to the Guaranty Trust Co., all of the collateral shall become the property of the Sterling company?

Answer. Yes, sir; still there is something further in the contract that bears on that. That is not all the contract.

Question. There are several other features in the contract?

Answer. With reference to the ownership of the stock.

Question. To which in particular do you refer?

Answer. I refer to the obligation that Mr. Baldwin assumed in case Ford or Libbey withdrew. Then the question of where the stock should go is a matter of law.

Question. There was not in the contract, though, any stipulation that in the event of Mr. Libbey's retirement that the stock should go otherwise than as recited, to the Sterling company?

Answer. No; there is no such provision. I felt that the Sterling company was the owner of the stock if the plan went through that we then had in mind.

Question. That was the idea you had in mind in drawing the contract?

Answer. Yes, sir.

Question. And at that time, when the contract was made, one-half the capital stock of the Sterling company was owned by the Thatcher Manufacturing Co.?

Answer. Yes, sir.

Question. Subsequently, and after December 11, 1919, the stock in the Sterling Glass Co., subscribed and paid for by Libbey, was transferred to the Thatcher Manufacturing Co.?

Answer. Yes. The Thatcher Manufacturing Co. paid the money and took the stock.

Question. Paid to Libbey the amount of money he had paid for that stock in the Sterling company with interest?

Answer. With interest.

Question. And the stock was thereupon transferred to the Thatcher Manufacturing Co.?

Answer. Yes.

Question. Can you ascertain or recall the date when the transaction with Libbey occurred in regard to the Sterling company stock?

Answer. I can not recall it. You will find it, I believe, in Mr. Collin's testimony. The check was dated June 7, 1920. It was for $261,750, which was $250,000 principal, and interest $11,750.

Question. And on the same day, June 7, 1920, the Sterling Glass Co. executed an instrument conveying to the Thatcher Manufacturing Co. all its rights, property, and privileges, including its right under the contract of August 28, 1919?

Mr. SMITH. Colonel, does not the record speak for itself?

Answer. Yes, sir; it is Exhibit P of the stipulation.

Mr. BRINDLEY. That is all.

Mr. SMITH. That is all.

(Witness excused.)

Examiner AVERILL. Does the respondent rest?

Mr. SMITH. The respondent rests.

Examiner AVERILL. The commission has already rested?

Mr. BRINDLEY. I do not think we have anything else.

Examiner AVERILL. Then, gentlemen, the examiner will take the transcript of the record and the exhibits as soon as they come in from the official reporter, and as early thereafter as is possible will prepare the finding of facts and a conclusion in the nature of the examiner's opinion in connection with the matter, which paper will be served upon counsel for the commission and counsel for the respondent.

Thereafter, the gentlemen on either side have 10 days within which to file any exceptions which they may desire to the report of the trial examiner, and then briefs can be prepared; the time will be set for that purpose and served upon opposing counsel, and later the matter will come on for hearing before the commission upon all the testimony and evidence, upon the report of the trial examiner and the exceptions thereto, upon the briefs and arguments of counsel.

Gentlemen, the trial examiner also is to set the time for filing briefs, and counsel for the commission will have 30 days from the service upon him of the findings of fact and conclusion of the trial examiner, and counsel for the respondent will have 45 days from the service upon counsel of the respondent wherein to file his briefs.

(Whereupon, at 2.05 o'clock p. m., the hearing in the above-entitled cause was declared closed.)

COMMISSION'S EXHIBIT NO. 1.

Thatcher Manufacturing Company.

Main office Elmira, N. Y.

ELMIRA, N. Y., *April 28th, 1921.*

FEDERAL TRADE COMMISSION,
Adrien F. Busick, Esq., Acting Gen'l Counsel,
Washington, D. C.

Thatcher Mfg. Company—Docket 738.

GENTLEMEN: As requested in your favor of the 13th inst., we have answered the questions therein contained to the best of our ability as below.

If our answers are not clear, or if there is anything further that we could furnish, please let us know and we shall be glad to do so.

1. The following concerns were engaged in manufacturing and selling milk bottles in the United States in the years 1917, 1918, and 1919:

(1) Thatcher Mfg. Company.
(2) Lockport Glass Company.
(3) Travis Glass Company.
(4) Essex Glass Company.
(5) J. T. &. A. Hamilton Co.
(6) Atlantic Bottle Co., New York City.
(7) Liberty Glass Co., Sapulpa, Okla.
(8) Illinois-Pacific Glass Co., San Francisco, Calif.
(9) Pacific Coast Glass Co., San Francisco, Calif.
(10) Buck Glass Co., Baltimore, Md.
(11) Winslow Glass Co., Columbus, Ohio.

2. We do not know the total number of milk bottles of all kinds annually produced and sold in each of the years 1917, 1918, and 1919, and have no means of knowing.

3. Thatcher Mfg. Company manufactured and sold milk bottles during the years 1917, 1918, and 1919, as follows:

1917—357,996 gross.
1918—331,055 gross.
1919—288,713 gross.

4. The total number of milk bottles produced and sold during the years 1917, 1918, and 1919 by the Travis Glass Company, Essex Glass Co., Lockport and Hamilton Companies, respectively, as shown by the license records of the Hartford-Fairmont Co., is given below. These figures do not include bottles made by these companies by hand or semi-automatic process, and we have no record of the total number of bottles made and sold by these plants. The following figures are by the gross:

	1917	1918	1919
	Gross.	*Gross.*	*Gross.*
Travis Glass Company	17,592	59,283	37,016
Essex Glass Company	14,953	57,380	87,376
Lockport Glass Company	None.	88,372	140,781
J. T. & A. Hamilton Co.	33,074	33,087	50,828

5. The total number of milk bottles manufactured and sold by Thatcher Mfg. Company in the year 1920, including its plants at Elmira, Kane, and Streator, and the plants acquired during the year 1920, was 1,008,814 gross. This includes milk bottles made for Thatcher Mfg. Company by J. T. & A. Hamilton Co., and by the American Bottle Co., at Streator, Ill.

6. The selling territory of Thatcher Mfg. Company at and prior to the years 1919 and 1920 was practically all of the States and Territories of the United States.

7. The selling territory of the Travis, Essex, and Lockport Glass Companies, and the J. T. & A. Hamilton Co., and their branches, prior to 1920 was practically all the States and Territories of the United States.

8. At the present time the selling territory of Thatcher Mfg. Company is practically all of the States and Territories of the United States.

9. The only agreement between Hartford-Fairmont Co. and Thatcher Mfg. Company, relative to granting milk bottle license by the Hartford-Fairmont Company to other and competing companies of Thatcher Mfg. Company, after the dissolution of the Travis, Essex, and Lockport Glass Companies and the Hamilton Co., is contained in section 10 of the general agreement between Hartford-Fairmont Company and Thatcher Mfg. Company, dated December 8th, 1920, of which the following is a true copy:

"SECTION 10.

"Thatcher Company sole licensee.

"The Hartford Company agrees that it will not, while not less than eleven (11) of such leased units are licensed to the Thatcher Company under outstanding licenses, issue licenses for use of any

such unit for making milk bottles within continental United States, to any person, firm, or corporation other than the Thatcher Company.

"*Provided, however*, That if, for any calendar year during the term of any license issued under this agreement, the Thatcher Company fails to pay to the Hartford Company a sum in total royalties at least equivalent to royalties, calculated at the rates set forth in section 13 hereof, upon fifty (50) per cent of the total output of milk bottles produced by the Thatcher Company for such year, whether produced with Hartford-Fairmont machinery or otherwise, then the Hartford Company may issue, for such term or terms as it may desire, a license or licenses for such machinery to licensees other than the Thatcher Company, which machinery will produce under normal circumstances, a sufficient output of milk bottles to make up such deficiency in royalties; and

"*Provided further*, That if such deficiency exists, however small, a license for at least one such unit may be so issued to an outside licensee, and said unit, and any other units so licensed to outside parties under this section, may thereafter be used to full capacity.

"Whenever by virtue of this section or any other section hereof, the Hartford Company shall have the right to issue a license or licenses to licensees other than the Thatcher Company, such licenses may, if the Hartford Company desires, be issued to a corporation or corporations subsidiary to or controlled by the Hartford Company. But, except through such issuance of such licenses, the Hartford Company shall not engage in the manufacture of milk bottles within continental United States during the term of any license issued hereunder."

10. There are no restrictive covenants between Thatcher Mfg. Company and the former owners of the Travis, Essex, and Lockport Glass Companies. The former owners of the Hamilton Co. agreed with Thatcher Mfg. Company by agreement of August 29th, 1919, as follows:

"The parties of the first part severally and not jointly, but each for himself or herself and not for each other, covenant and agree not to manufacture, produce, or sell and not to directly or indirectly engage in the business of manufacturing or selling, for a period of ten years from January 1, 1920, by any process whatsoever, glass milk bottles for sale to customers located outside of Allegheny County, Pennsylvania."

11. The only agreement between Thatcher Mfg. Company and the Owens Company relative to the use by Thatcher Mfg. Company and its manufacturing plants of both Owens Company and the Hartford-Fairmont Co., is as follows. There is no such agreement with the Hartford-Fairmont Company:

"Without the consent thereto in writing of said licensor (the Owens Company), said licensee (Thatcher Mfg. Company) will not, during the term of the license hereby granted, make any of the herein before specified bottles or jars (milk bottles) by the aid of any machine other than the machines furnished them by said licensor under this license."

The Thatcher Company claims that consent was given but this is not yet admitted by the Owens Company.

12. When the notes of Messrs. Baldwin, Libbey, and Ford, held by the Guaranty Trust Company of New York, were paid the stocks, bonds, and notes held by the Guaranty Trust Co. as collateral, were delivered to H. C. Mandeville and F. E. Baldwin, and remained in the possession of F. E. Baldwin, except the stock of the Woodbury Co. which was turned over to Thatcher Mfg. Company, and by Thatcher Mfg. Company deposited with the Guaranty Trust Company as trustees under the mortgage of Thatcher Mfg. Company, dated April 1st, 1920.

As additional information, we wish to point out that J. T. & A. Hamilton Co. are making and selling milk bottles in the county of Allegheny, Pa., and the following companies are now making milk bottles that were not making or selling milk bottles before 1920. And in addition to these all the companies Nos. 6 to 11 in the list given in answer to question No. 1 are still making and selling milk bottles:

1. Birney-Bond Glass Co., Clarion, Pa.
2. C. F. Flaccus Glass Co., Tarentum, Pa.
3. F. E. Reed Glass Co., Rochester, N. Y.
4. Saginaw Glass Co., Saginaw, Mich.
5. A Glass Co. at Los Angeles, Calif., whose name we do not know.

Out of the eleven glass companies making milk bottles before 1920, six are still making and selling milk bottles, and five glass companies are now making and selling milk bottles that did not make and sell milk bottles before 1920.

Yours very truly,

THATCHER MFG. COMPANY,
(Signed) H. C. MANDEVILLE,
Vice President.

HCM/H

COMMISSION'S EXHIBIT NO. 2.

AUGUST 28, 1921.

GUARANTY TRUST COMPANY OF NEW YORK,
140 Broadway, New York City, N. Y.

GENTLEMEN: In connection with the proposed loan by your company to Francis E. Baldwin, Esq., for the purpose of enabling him to acquire the outstanding stock of the Travis Glass Company, and the Woodbury Glass Company, I beg to inform you that the Woodbury Glass Company is engaged in the manufacture and sale of condiment bottles, jam jars, and fruit-juice bottles. The Travis Glass Company is engaged in the manufacture of milk bottles only.

The Woodbury Glass Company has, in the past, manufactured a small amount of milk bottles, but by a different process from that employed by the Travis Glass Company, covering an almost wholly different territorial field. For about a year past, however, the manufacture of milk bottles by the Woodbury Glass Company has been declining and it is the intention of the company gradually to discontinue all manufacturing thereof.

There is, therefore, practically no competition between the two companies.

Yours very truly,

(Signed) I. T. AXTON.

COMMISSION'S FINDINGS.

(Dated June 26, 1923.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission.

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 26th day of June A. D. 1923.

Present: Victor Murdock, chairman, John F. Nugent, Huston Thompson, Vernon W. Van Fleet, Nelson B. Gaskill, commissioners.

FEDERAL TRADE COMMISSION v. THATCHER MANUFACTURING COMPANY.	Docket 738. Findings as to the facts and conclusions.

Pursuant to the provisions of an act of Congress approved October 15, 1914 (the Clayton Act) the Federal Trade Commission issued and served its amended complaint upon the Thatcher Manufacturing Company, a corporation, charging that the Thatcher Manufacturing Company is and has been violating the provisions of section seven of said act of Congress.

Thereupon the respondent, having entered its appearance, filed its answer to the amended complaint of the commission, and a stipulation of facts was entered into by the respondent and approved by the commission, and formal hearings were had before examiners of the commission; thereafter the whole matter regularly came on for hearing before the Federal Trade Commission upon such stipulation and the testimony, and upon the briefs and argument of counsel, and the commission having duly considered the record, and being fully advised in the premises, makes its report in writing and states its findings as to the facts as follows:

FINDINGS AS TO THE FACTS.

PARAGRAPH ONE. The Thatcher Manufacturing Company, hereinafter called the respondent, is a corporation organized under the laws of the State of New York, with its principal office, manufacturing plant, and place of business at Elmira, New York. It has branch offices and manufacturing plants at Clarksburg and Cedar Grove, West Virginia, Mt. Vernon, Ohio, Lockport, New York, and in other States of the United States. It is engaged in manufacturing milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged, and it has been so engaged since the year 1905.

PARAGRAPH TWO. The Travis Glass Company, on and prior to August 28, 1919, and until January 13, 1921, was a corporation under the laws of the State of West Virginia, with its principal office, place of business, and manufacturing plant at Clarksburg, West Virginia, with a branch plant at Cedar Grove, West Virginia. On and prior to August 28, 1919, and for some time thereafter, the

Travis Glass Company was engaged in manufacturing milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged.

PARAGRAPH THREE. The Essex Glass Company, on and prior to August 28, 1919, and until December 18, 1920, was a corporation under the laws of the State of Ohio, with its principal office and place of business at Mt. Vernon, Ohio, having manufacturing plants at Mt. Vernon, Ohio, and Parkersburg, West Virginia. On and prior to August 28, 1919, and for some time thereafter, the Essex Glass Company was engaged in manufacturing milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged.

PARAGRAPH FOUR. The Lockport Glass Company, on and prior to August 28, 1919, and until October 20, 1920, was a corporation under the laws of the State of New Jersey, with its principal office, place of business, and manufacturing plant at Lockport, New York. On and prior to August 28, 1919, and for some time thereafter, the Lockport Glass Company was engaged in manufacturing milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged.

PARAGRAPH FIVE. The Woodbury Glass Company is a corporation under the laws of the State of Indiana, with its principal office, place of business and manufacturing plant at Winchester, Indiana. On and prior to August 28, 1919, the Woodbury Glass Company was engaged in manufacturing whiskey bottles, condiment bottles, and milk bottles, and in selling, shipping, and delivering such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged. Since August 28, 1919, or shortly thereafter, the Woodbury Glass Company has been engaged in manufacturing condiment bottles, fruit juice bottles, fruit jars and like glassware, and in selling and shipping such bottles and glassware to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged. On and prior to August 28, 1919, the Woodbury Glass Company was in competition with the respondent and with other persons, firms, and corporations, in the sale, transportation, and delivery of milk bottles in interstate commerce.

PARAGRAPH SIX. The J. T. & A. Hamilton Company is a corporation under the laws of the State of Pennsylvania, with its principal office, place of business and manufacturing plant at Pittsburgh, Pennsylvania. On and prior to August 28, 1919, the J. T. & A. Hamilton Company was engaged in manufacturing milk bottles, and in selling, and shipping such bottles to purchasers among the several States of the United States and the District of Columbia in commerce in competition with other persons, firms, and corporations similarly engaged.

PARAGRAPH SEVEN. The Owens Bottle Company is a corporation under the laws of Ohio and was organized as The Owens Bottle-Machine Company, but duly changed its name in 1919 to The Owens Bottle Company. It has its principal office and place of business at Toledo, Ohio, and owns and operates glass factories in Ohio, West Virginia, New Jersey, Indiana, and other States, and is and for many years has been engaged in manufacturing and selling glass bottles and other glassware, but does not manufacture milk bottles.

PARAGRAPH EIGHT. The Owens bottle-blowing machine is a modern, improved, patented machine with which glass bottles and other glassware are manufactured automatically and more rapidly, cheaply, and successfully than with semiautomatic machines or by hand labor. The Owens bottle-blowing machine was the first, and until about the year 1917, the only successful device or machine for manufacturing glass bottles and other glassware automatically. During the year 1903, the Owens Bottle-Machine Company acquired from the owner of the patents then covering the Owens bottle-blowing machine the exclusive right to use said machine in the United States in making glass bottles and other glassware, and since said date the Owens Bottle Company has perfected improvements and additions to said machine, and has secured and owns in its right six or more patents covering such improvements and additions.

PARAGRAPH NINE. The Owens Bottle Company has licensed and leased Owens bottle-blowing machines, and the right to use the same, to certain persons, firms, and corporations engaged in manufacturing glass bottles and other glassware. The manufacture, sale, licensing, and leasing of the Owens bottle-making machines is controlled exclusively by the Owens Bottle Company. About the year 1905, under certain contracts, licenses, and leases from the Owens Bottle Company, the respondent acquired the exclusive right to use the Owens bottle-blowing machines in the United States for manufacturing milk bottles, and the exclusive right to all improvements that may be made thereon, and any new machines that the Owens Bottle Company may own or acquire. The respondent still owns such exclusive rights, except that the exclusive right to said improvements and said new machines terminated October 1, 1920.

PARAGRAPH TEN. About 1916 or 1917, the Hartford-Fairmont Company of Hartford, Connecticut, produced and patented a successful bottle-making machine and a feeder therefor, and both could be operated together as a complete automatic unit. The feeder is a device for transferring molten glass from the tank into the glass molds or bottle-forming machine. The Hartford-Fairmont feeders and machines when operated together were equal, and in some respects superior, to the Owens bottle-making machines. The Owens bottle-making machines and the Hartford-Fairmont feeders and bottle-making machines are the only successful entirely automatic bottle-making machines operated as complete units.

PARAGRAPH ELEVEN. After the Hartford-Fairmont feeders and bottle-making machines had been produced and patented, the exclusive right and license to use such feeders and machines for manufacturing milk bottles were acquired by the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the J. T. and A. Hamilton Company. Under such exclusive rights and

with such feeders and machines, these four companies, on and prior to August 28, 1919, were successfully manufacturing milk bottles. The Woodbury Glass Company acquired a nonexclusive license to use the Hartford-Fairmont feeders only in manufacturing condiment bottles, fruit-juice bottles, food containers, fruit jars, and glassware for carbonated soft drinks. The Woodbury Glass Company did not begin to use the Hartford-Fairmont feeders until August 28, 1919, or shortly prior thereto. Prior to using Hartford-Fairmont feeders, the Woodbury Glass Company manufactured whiskey bottles, condiment bottles, and milk bottles on semiautomatic machines, and so manufactured such bottles on and prior to August 28, 1919, and sold and delivered such bottles in commerce in competition with other persons, firms, and corporations.

PARAGRAPH TWELVE. In the year 1919 I. T. Axton, the president and a large stockholder of the Woodbury Glass Company, attempted to merge the Woodbury Glass Company with the companies which held the exclusive rights to use the Hartford-Fairmont feeders and machines for manufacturing milk bottles. He controlled the common capital stock of the Woodbury Glass Company. In May 1919, Axton secured options on the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and on the Hartford-Fairmont license, feeder and machine, and milk-bottle business of the J. T. & A. Hamilton Company and tried to merge those companies with the Woodbury Glass Company, but failed to accomplish the proposed merger.

PARAGRAPH THIRTEEN. A short time before his options expired Axton approached F. E. Baldwin, the president and largest stockholder of the respondent, and suggested that the Thatcher Manufacturing Company, or Baldwin and his associates, exercise the options and rights which Axton held. Baldwin considered the proposition and conferred with H. C. Mandeville, a director and the general counsel of the respondent, and with E. D. Libbey, the president of the Owens Bottle Company. After negotiations and interviews with the Owens Bottle Company its consent and advice to the purchase was obtained. E. D. Libbey agreed to assist in raising the necessary money, and also agreed to go into the transaction provided he could acquire the patents on the Hartford-Fairmont feeders and bottle-making machines. During August, 1919, it was decided to exercise the options and rights held by Axton.

PARAGRAPH FOURTEEN. The options held by Axton expired September 1, 1919, and the remaining option time was short. In pursuance of the decision to exercise the options and rights held by Axton, the Sterling Glass Company, Inc., was formed on August 23, 1919, to serve as a temporary means through which the desired options and rights could be acquired quickly. Mandeville incorporated the Sterling Glass Company, Inc., under the laws of New York on August 23, 1919, with an authorized capital stock of six hundred thousand dollars ($600,000), of which five hundred thousand dollars ($500,000) was issued at par for cash. One-half of the issued capital stock of the Sterling Glass Company was taken by E. D. Libbey, and the remaining one-half by the respondent. Eight shares of such stock taken by the respondent were issued in the names of four agents or employees of the respondent, but such eight shares belonged to the respondent.

PARAGRAPH FIFTEEN. On August 28, 1919, Axton, pursuant to directions, assembled the stockholders of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company at an office of the Guaranty Trust Company in New York City, New York, with their respective stock certificates ready for transfer and delivery on payment of the purchase price therefor. At the same time F. E. Baldwin, the president of the respondent, H. C. Mandeville, a director and general counsel of the respondent, E. D. Libbey, the president of the Owens Bottle Company, and William Ford, a business associate of Libbey and a large stockholder in the Owens Bottle Company, met in another room of the same building.

PARAGRAPH SIXTEEN. The sum of approximately two million one hundred and ten thousand dollars ($2,110,000) in cash was required to exercise the options and rights held by Axton, and the Sterling Glass Company had five hundred thousand dollars ($500,000) of that amount. To obtain the required balance, F. E. Baldwin, E. D. Libbey, and William Ford, on behalf of the Sterling Glass Company, discounted to the Guaranty Trust Company their three separate individual promissory notes for a total of one million, six hundred ten thousand dollars ($1,610,000), and each indorsed the notes of the other two so that all were equally liable on all three notes. Such notes were dated and discounted August 28, 1919, and were payable on demand, but the Guaranty Trust Company agreed to carry the notes for one year. The proceeds of said notes and the five hundred thousand dollars ($500,000) of the Sterling Glass Company were deposited in the Guaranty Trust Company to the credit of the Sterling Glass Company, and used, on August 28, 1919, to acquire the capital stock of the Essex Glass Company, the Travis Glass Company and the Lockport Glass Company, also the common capital stock of the Woodbury Glass Company, and the license, machine, and milk-bottle business of the J. T. and A. Hamilton Company. The certificates of stock in the Essex, Travis, Lockport, and Woodbury companies were indorsed in blank by the respective vendors and retained by the Guaranty Trust Company as collateral security for the three notes of Baldwin, Libbey, and Ford. The transaction with the J. T. and A. Hamilton Company ran directly to the respondent, the J. T. and A. Hamilton Company transferring its Hartford-Fairmont license and machine and its milk-bottle business outside of Allegheny County, Pennsylvania, directly to the respondent.

PARAGRAPH SEVENTEEN. During the progress of said transaction at the Guaranty Trust Company, but before the capital stock of the Essex, Travis, Lockport, and Woodbury companies had been acquired as stated in these findings, I. T. Axton wrote and delivered the following letter:

AUGUST 28, 1919.

GUARANTY TRUST COMPANY OF NEW YORK,
140 Broadway, New York City, N. Y.

GENTLEMEN: In connection with the proposed loan by your company to Francis E. Baldwin, Esq., for the purpose of enabling him to acquire the outstanding stock of the Travis Glass Company, and the Woodbury Glass Company, I beg to inform you that the Woodbury Glass Company is engaged in the manufacture and sale of con-

diment bottles, jam jars, and fruit-juice bottles. The Travis Glass Company is engaged in the manufacture of milk bottles only.

The Woodbury Glass Company has in the past manufactured a small amount of milk bottles, but by a different process from that employed by the Travis Glass Company, covering an almost wholly different territorial field. For about a year past, however, the manufacture of milk bottles by the Woodbury Glass Company has been declining, and it is the intention of the Company gradually to discontinue all manufacturing thereof.

There is, therefore, practically no competition between the two companies.

Yours very truly,

I. T. AXTON.

PARAGRAPH EIGHTEEN. Immediately after the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company had been acquired as aforesaid, F. E. Baldwin, the president of the respondent, appeared before the vendors of the stock and requested the officers of said four companies to remain in their respective positions and continue the operation of the companies until further directions. The resignations of all officers of the four companies were taken by Baldwin to be exercised at his option. The respondent conducted these four companies under their own management until January 1, 1920, when the respondent brought the entire business of said four companies to Elmira, New York, and thereafter such companies were managed and directed by the Thatcher Manufacturing Company.

PARAGRAPH NINETEEN. After the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company had been acquired as stated in these findings, Baldwin, Libbey, Ford, and the Sterling Glass Company entered into the following agreement:

"Agreement made this 28th day of August, 1919, between Francis E. Baldwin, of the first part, William Ford, of the second part, Edward D. Libbey, of the third part, and Sterling Glass Company, Inc., hereinafter called 'Sterling Company,' of the fourth part.

"Witnesseth:

"Whereas, Baldwin, Ford, and Libbey are each making certain notes to the Guaranty Trust Company as follows:

"Baldwin is making a note for six hundred fifty thousand dollars ($650,000) with collateral security of two thousand (2,000) shares of the common stock of the Woodbury Glass Company and five hundred (500) shares of the common stock of the Travis Glass Company, being all the outstanding stock of each of said companies;

"Libbey is making a note of four hundred eighty thousand dollars ($480,000) with one thousand (1,000) shares, being all the outstanding capital stock of the Essex Glass Company, as collateral; and

"Ford is making a note for four hundred eighty thousand dollars ($480,000), with one thousand seven hundred sixty-two shares (1,762) of the common stock of Lockport Glass Company and one hundred ten (110) shares of its preferred stock, as collateral, together with eighty-nine thousand dollars ($89,000) par value of bonds and one hundred seventeen thousand dollars ($117,000) of

notes of said company; all of said notes being given on demand and amounting in all to one million six hundred ten thousand dollars ($1,610,000); and

"Whereas the Sterling Company is a corporation organized under the laws of the State of New York, with an authorized capital stock of six hundred thousand dollars ($600,000), of which five hundred thousand dollars ($500,000) has been paid in cash, and Libbey and Baldwin have each contributed one-half (½) of said capital stock; and

"Whereas Libbey, Baldwin, and Ford have each endorsed the notes of the others, so that all are liable on all of the notes, either as maker or endorser; and

"Whereas it is the purpose of the parties hereto that at a later date a permanent company be organized to take over the ownership of the plants and assets of all the said companies, together with the Thatcher Manufacturing Company, of Elmira, New York, and that said permanent company shall have such capital and be organized in such form as may be agreed upon by the parties hereto, and it is agreed that the said stocks shall be held together and shall not be sold by either of the parties hereto without the consent of the others, and

"Whereas Libbey has entered into this agreement in contemplation of the purchase by him or for his account of the so-called 'Hartford-Fairmont' patents covering certain automatic feeding devices and glass-blowing machinery now owned by Hartford-Fairmont Company, or under the control thereof; and

"Whereas it is agreed between the parties hereto that, if the parties do not mutually agree upon the form and capitalization of the company and the details in respect thereto, Ford and Libbey may retire from Sterling Company and from this transaction, at their option, and shall in that event be released from all liability as maker or endorser of said note, and Libbey shall be repaid the two hundred fifty thousand dollars ($250,000) or other amounts contributed to the capital stock of Sterling Company; and

"Whereas Sterling Company undertakes to assume and does hereby assume all liability of the other parties hereto upon the said notes, whether maker or endorser.

"Now, therefore, in consideration of the endorsements above named and of the mutual covenants herein contained and of one dollar ($1.00), receipt whereof is hereby acknowledged by each of the parties hereto, it is agreed as follows:

"First. That Sterling Company hereby undertakes to and does hereby save the other parties to this agreement and each of them, harmless from any and all liability or obligation by reason of the making or endorsing of any of the notes above recited, and, upon the payment of the said note all of the collateral thereto shall become the property of Sterling Company.

"Second. That until the formation of the permanent company above recited, all of the stock and collateral mentioned above shall be held together as one unit so that the said permanent company may be formed either by merger or by sale of assets as may be determined, and that none of the parties hereto shall sell or dispose of the said stocks or collateral.

"Third. That if the so-called 'Hartford-Fairmont' patents, or control thereof, shall not be acquired by Libbey within six months

of the date of this agreement, or if the parties hereto shall fail to agree upon the form, capitalization, or organization of the permanent company hereinbefore referred to, Libbey may, at any time upon service of ten (10) days written notice, upon Baldwin, retire from this agreement. In the event of Libbey's retirement as aforesaid, Baldwin agrees to assume all liability hereunder, and all liability upon the said notes or in connection therewith, of each and all of the other parties hereto; to procure the release of the said other parties from said notes within four (4) months from the date of the aforesaid notice; to hold harmless and indemnify each and every of the other parties hereto from and against any and all liability for or on account of the aforesaid notes; and to repay to Libbey within four (4) months of the date of the service of the aforesaid notice upon him the two hundred fifty thousand dollars ($250,000) aforesaid, invested by Libbey in the capital stock of Sterling Company, and all other amounts which Libbey may have so invested or advanced to Sterling Company, with interest on each such investment and advance from the date thereof, at the rate of six per cent (6%) per annum.

"Fourth. Upon the repayment of said moneys and the release of said endorsements and liability, Ford and Libbey hereby release to Baldwin any and all interest in the stock of the Sterling Glass Company, and agree to transfer the same to his nominee, and Baldwin may proceed with the organization of such permanent company and with the disposition of Sterling Company and its assets, in such manner as Baldwin may see fit, free from all obligations under this agreement.

"Fifth. This agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, and assigns of the first, second, and third parties, and the successors and assigns of the fourth party.

"Sixth. This agreement supersedes and terminates an agreement made between Baldwin, Ford, and Sterling Company, dated August 28, 1919, and approved and joined in by Libbey, by C. J. Wilcox, secretary.

"In witness whereof, the parties have set their hands the day and year first above written.

"F. E. BALDWIN.
"E. D. LIBBEY.
"WILLIAM FORD.
"STERLING GLASS COMPANY, INC.,
"By H. C. MANDEVILLE,
"*President.*"

PARAGRAPH TWENTY. Some little time after August 28, 1919, and before December 11, 1919, it was determined that Libbey could not acquire the Hartford-Fairmont interests, and Libbey abandoned that idea. Separate written notices, dated December 11, 1919, were given by Libbey and Ford to Baldwin and the respondent stating that, as the plan of reorganization of the companies purchased under the agreement of August 28, 1919, did not meet their approval, they desired to retire from the agreement and to be relieved from further liability under the notes given to the Guaranty Trust Company.

Libbey's notice also stated that he expected to be reimbursed for the money advanced for the capital stock of the Sterling Glass Company, all to be accomplished not later than April 12, 1920. Libbey was not immediately paid for his investment in the Sterling Glass Company, nor were Libbey and Ford released from liability within the time and manner provided in the third paragraph of said agreement of August 28, 1919, and by the date stated in Libbey's notice. The indebtedness and notes to the Guaranty Trust Company remained unchanged until paid by the respondent on July 3, 1920. Libbey and Ford did not appear in the transaction subsequent to December 11, 1919, except that Libbey's stock in the Sterling Glass Company was transferred of record to the respondent on June 5, 1920, and on June 7, 1920, the respondent paid Libbey two hundred sixty-one thousand, seven hundred fifty dollars ($261,750) for such stock.

PARAGRAPH TWENTY-ONE. On or about December 1, 1919, prior to the date of the notices from Libbey and Ford, the certificates of stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company and the Woodbury Glass Company, acquired on August 28, 1919, were transmitted by the Guaranty Trust Company to its agent at Elmira, New York, and there formally transferred on the records of said companies. Such certificates were cancelled, and new certificates for all the capital stock of the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company, and for all the common capital stock of the Woodbury Glass Company, were issued to persons nominated by Baldwin. All such stock in said companies, except two or three shares in each company issued to other persons to qualify the requisite directors, was issued to the following named persons:

F. E. Baldwin, president of the respondent,
H. C. Mandeville, a director and general counsel of the respondent,
R. W. Niver, vice president and a director of the respondent, and
F. L. Collins, a confidential employee of the respondent.

F. E. Baldwin and F. L. Collins were elected president and secretary, respectively, of said Essex, Travis, Lockport, and Woodbury companies.

PARAGRAPH TWENTY-TWO. On December 5, 1919, all the stock of the Travis Glass Company, except five shares to qualify five other persons as directors, was issued to H. C. Mandeville, and on January 5, 1920, the shares issued to Mandeville were transferred to F. E. Baldwin.

On December 6, 1919, all the stock of the Lockport Glass Company, except six shares to qualify six other persons as directors, was issued to H. C. Mandeville.

On December 8, 1919, all the capital stock of the Essex Glass Company, except six shares to qualify six other persons as directors, was issued to H. C. Mandeville, and on January 5, 1920, the shares issued to Mandeville were transferred to F. L. Collins.

On December 8, 1919, all the common capital stock of the Woodbury Glass Company, except five shares to qualify five other persons as directors, was issued to H. C. Mandeville, and on January 5, 1920, the shares issued to Mandeville were transferred to F. E. Baldwin.

None of the persons to whom such stock was so issued paid any money for such stock or gave any consideration therefor. The certificates so issued were not delivered to such persons, but were severally indorsed in blank by the respective persons to whom issued, and returned to the Guaranty Trust Company, at New York City, and held as collateral security for the said notes of Baldwin, Libbey, and Ford until such notes were finally paid.

PARAGRAPH TWENTY-THREE. During the month of September, 1919, the respondent advanced forty thousand, six hundred five dollars ($40,605) to the Woodbury Glass Company, and during the month of October, 1919, the respondent advanced twenty-five thousand dollars ($25,000) to the Travis Glass Company. On December 31, 1919, the respondent received seventy-five thousand dollars ($75,000) from the Essex Glass Company, and that sum was mingled with and became a part of the funds and assets of the respondent. Such advances were not made in payment of any indebtedness whatever.

PARAGRAPH TWENTY-FOUR. The annual report for 1919 of F. E. Baldwin, as president of the respondent, was made to the stockholders and directors of the respondent on February 18, 1920, and in that report Baldwin formally related the acquisition of the capital stock of the Essex, Travis, Lockport, and Woodbury companies in the following language:

"During the year starting, I believe, in April, negotiations were held in regard to the merging of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the Woodbury Glass Company, and the purchasing of the Hartford-Fairmont feeder and milk-bottle machine and milk-bottle business of the J. T. & A. Hamilton Company. These parties, except the Woodbury Glass Company, held the exclusive licenses for the Hartford-Fairmont feeder and the machines for the manufacture of milk bottles in the U. S. The Woodbury Glass Company had a nonexclusive license for the manufacture of condiment bottles. After several months' negotiations and interviews with the Owens Bottle Machine Company, and obtaining their consent and advice that we purchase these companies, and thereby obtain the rights of the Hartford-Fairmont feeders, upon the 29th day of August, we purchased the capital stock of the companies named and the Hartford-Fairmont feeder and the machines and the milk-bottle business of the J. T. and A. Hamilton Company.

"The money was borrowed for the making of these purchases of the Guaranty Trust Company of New York. We were assisted in obtaining same by E. D. Libbey, President of the Owens Bottle Company, and Mr. William Ford, a large stockholder in the Owens Bottle Company.

"We conducted these companies under their own management until the first of January. The first of January we brought the entire business to Elmira, and the same is being now managed and directed by the Thatcher Manufacturing Company.

"The opportunity to purchase these plants, I can not help but feel, was providential. It puts us in the forefront as we never have been before in the manufacture of milk bottles. With the Hartford-Fairmont machines we can manufacture bottles at least 50¢ per gross cheaper than we can with the Owens machines."

PARAGRAPH TWENTY-FIVE. On and prior to August 28, 1919, the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company sold milk bottles in commerce in competition with each other and in competition with the Thatcher Manufacturing Company in substantially all the States and Territories of the United States. There has been no competition between the respondent and the Woodbury Glass Company since August 28, 1919. All competition between the respondent and the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company ceased not later than January 1, 1920, and no competition has since existed between any of said companies.

PARAGRAPH TWENTY-SIX. During the month of June, 1919, the Woodbury Glass Company sold and shipped milk bottles in carload lots to purchasers in the State of Illinois. On the 8th day of April, 1919, the Illinois Glass Company of Chicago, Illinois, gave an order to the Woodbury Glass Company for one carload of 200 gross, quart, private mould, Wisconsin sealed milk bottles, to be shipped on May 3, 1919, and said order contained the following instruction:

"The above car is to be followed with an additional car of quarts to be shipped the first day of each month on account of this contract until notified to discontinue."

It does not appear that such order or instruction was ever changed or discontinued.

PARAGRAPH TWENTY-SEVEN. In order to finance the indebtedness to the Guaranty Trust Company under the three notes given by Baldwin, Libbey, and Ford, an agreement was made on April 10, 1920, by Baldwin with Hemphill, Noyes & Company and Bonbright & Company, bond buyers of New York City, providing a plan for a reorganization of the respondent by increasing its capital stock from one million dollars ($1,000,000) to one million, six hundred twenty-five thousand dollars ($1,625,000), and also by issuing two million dollars ($2,000,000) of its bonds to be purchased by such bond buyers. That agreement recited that Baldwin represented a control of at least two-thirds or more of both the outstanding common and preferred stock of the respondent for the purpose of carrying out the plan therein set forth. In the agreement Baldwin is called the "seller"; Hemphill, Noyes & Company and Bonbright & Company are called the "buyers"; and the respondent is referred to as the "corporation." Paragraph IV of that agreement is as follows:

"IV.

"Either before or at the time of the reorganization, as herein provided, the corporation shall acquire all of the assets and the business of the following companies, to wit: Travis Glass Company, Essex Glass Company, and the Lockport Glass Company, all of the shares of stock of said companies being now owned by the Sterling Glass Company, whose shares of stock are all owned by the corporation; and at the same time, the corporation shall also acquire all of the common stock of the Woodbury Glass Company which is now owned by the Sterling Glass Company. As a condition of such acquisition, the corporation shall assume all of the obligations of the aforesaid companies, which shall thereupon be dissolved."

PARAGRAPH TWENTY-EIGHT. The agreement of April 10, 1920, also provided that the bonds to be issued by the respondent should be secured by a mortgage or deed of trust, and among the provisions pertaining thereto are the following excerpts from Paragraph V of such agreement:

"V.

"Immediately upon the filing of the certificate of reorganization of the corporation as provided by law the seller shall cause the corporation to authorize, make, and execute an issue of $2,000,000, principal amount of its corporate bonds (hereinafter called the 'bonds'). The said issue of bonds shall be limited to $2,000,000, principal amount thereof; shall be matured ten years after the date thereof; shall be payable, principal and interest, in gold coin of the United States of America of the present standard of weight and fineness; shall bear interest at the rate of seven per cent per annum, payable semi-annually; * * *

* * * * * * *

"Should the buyers notify the seller that they will purchase the securities of the corporation as hereinbefore provided, and should the buyers contemporaneously therewith notify the seller that it is their desire to have the bonds secured by mortgage on the property of the corporation and the properties of the Travis Glass Company, Essex Glass Company, and Lockport Glass Company to be acquired by it as hereinbefore provided, then and in such event the seller shall cause the corporation to execute a mortgage on all of its property and that of said companies, of every kind and description whatsoever, and also on the stock of the Woodbury Glass Company to be acquired by it as hereinbefore set forth, to secure the payment of principal and interest of the bonds: * * *

* * * * * * *

"The seller agrees that the following representations constitute a part of this agreement and are the basis upon which the sale hereinafter provided for is to be made:

"A. * * *

"B. * * *

"C. That the corporation and its aforesaid subsidiary companies have good and marketable title to all of their properties, free and clear of all incumberances with the exception of the lien or aforesaid mortgage of $149,500 on a portion of the property of the corporation.

"D. That the business of the corporation and its said subsidiary companies is in sound condition, the present management successful and in good standing, and that tht prospects for continued profitable business are good."

PARAGRAPH TWENTY-NINE. The reorganization of the respondent was carried out in accordance with the agreement of April 10, 1920, between Baldwin and the bond buyers. Two days after such agreement, viz, on April 12, 1920, the stockholders of the Thatcher Manufacturing Company authorized an increase in the capital stock of the respondent as stipulated in the agreement. Such additional stock was issued for cash, and from the proceeds thereof the respondent, on June 7, 1920, paid Libbey two hundred sixty-one

thousand, seven hundred fifty dollars ($261,750) for the sum Libbey advanced for the capital stock of the Sterling Glass Company with interest thereon. The stock in Libbey's name was transferred of record to the respondent on June 5, 1920, and thereupon the respondent became the owner of record of all the capital stock of the Sterling Glass Company, except the eight (8) shares issued in the names of agents or employees of the respondent.

PARAGRAPH THIRTY. On June 3, 1920, before the stock in Libbey's name was transferred of record or paid for by the respondent, the following communication was given to the Sterling Glass Company, and its board of directors:

JUNE 3, 1920.

STERLING GLASS CO., INC., AND THE
BOARD OF DIRECTORS THEREOF.

DEAR SIRS: The undersigned have acquired all the shares of the capital stock of Sterling Glass Company, Inc., and are desirous of having Sterling Glass Company, Inc., dissolved, and in anticipation of such dissolution to have all of its property and assets as going concern assigned, transferred and set over to Thatcher Manufacturing Company. Upon such a transfer the Thatcher Manufacturing Company will assume and pay all debts and obligations of Sterling Glass Company, Inc., including all of its obligations under a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part.

Therefore, the undersigned hereby request Sterling Glass Company, Inc., and its board of directors to cause to be transferred and set over to Thatcher Manufacturing Company, all of the property of Sterling Glass Company, Inc., of every kind and description and wheresoever situated, including the aforesaid agreement between Francis E. Baldwin, William Ford and Sterling Glass Company, Inc., bearing date August 28th, 1919, together with all its right, title and interest therein, for the consideration of one dollar ($1.00) and the assumption and payment of all the debts and obligations of Sterling Glass Company, Inc.

Furthermore, the undersigned requests the board of directors of Sterling Glass Company, Inc., to institute the proper proceedings under the laws of the State of New York for the voluntary dissolution of Sterling Glass Company, Inc., and hereby covenant and agree as the holders of all the stock of Sterling Glass Company, Inc., to take all the necessary proceedings and to vote the said stock so as to consummate said dissolution.

Yours very truly,

THATCHER MANUFACTURING COMPANY,
By F. E. BALDWIN, *Pres.*,
H. C. MANDEVILLE,
ELY W. PERSONIUS,
LEO WAXMAN,
W. P. RODGERS.

PARAGRAPH THIRTY-ONE. The Sterling Glass Company, on June 7, 1920, by H. C. Mandeville, its president, executed a bill of sale by which all property and assets of the Sterling Glass Company of

every kind and description, including the agreement of August 28, 1919, with all rights and interest therein, were transferred to the respondent.

Assignments or transfers dated as of June 1, 1920, of the rights and licenses to use the Hartford-Fairmont feeders and machines were executed and delivered to the respondent by the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company and the J. T. & A. Hamilton Company. The Hartford-Fairmont Company assented and agreed to the transfer and assignment of such rights and licenses to the respondent.

PARAGRAPH THIRTY-TWO. Pursuant to the condition expressed in paragraph four of the contract of April 10, 1920, for the acquisition of the assets of the Essex Glass Company, the Travis Glass Company and the Lockport Glass Company, and for a dissolution of said companies, separate written notices were addressed to the Essex, Travis and Lockport companies, and the respective boards of directors thereof, by Baldwin, Mandeville, Collins and Niver and the persons holding one share each of stock in such companies, and all such notices are dated June 7, 1920. It was recited in each notice that the persons whose names were signed thereto had acquired all the capital stock of the company named, and desired to have such company dissolved, and in anticipation of such dissolution to have all the properties and assets of such company as a going concern transferred to said persons or their nominee. Each company was requested to cause all the assets and property of such company to be transferred to said persons or their nominee. Resolutions providing for such transfer and dissolution were thereupon adopted by such persons as the stockholders and directors of the Essex, Travis and Lockport companies, respectively. In each case the respondent was nominated as the transferee for the property of such companies. Deeds and bills of sale were severally drawn and executed by each company purporting to transfer and convey to the Thatcher Manufacturing Company all property and assets of every kind belonging to the Essex, Travis and Lockport companies, respectively. Such deeds and bills of sale were executed and ready for delivery, and were executed by each company by F. E. Baldwin as president, and attested by F. L. Collins as secretary, respectively. The deeds and bills of sale from the Essex Glass Company were dated June 17, 1920. The deeds and bills of sale from the Travis Glass Company and the Lockport Glass Company were dated June 25, 1920. Each deed and bill of sale recited a consideration of one dollar and other good and valuable considerations.

PARAGRAPH THIRTY-THREE. In pursuance of the agreement of April 10, 1920, between Baldwin and the bond buyers, to accomplish the issue of bonds provided for therein, the respondent executed a mortgage or deed of trust to the Guaranty Trust Company, as trustee, to secure the payment of said bonds. Such mortgage or deed of trust included all properties of the respondent, also all properties of the Essex, Travis, and Lockport companies, and the common capital stock of the Woodbury Glass Company. The bonds to be issued and sold and to be secured by such mortgage or deed of trust were drawn and signed, and dated April 1, 1920.

PARAGRAPH THIRTY-FOUR. On July 3, 1920, Baldwin and Mandeville, representing the respondent, met the representatives of the bond buyers at the offices of the Guaranty Trust Company in New York City, New York. The bonds and the mortgage or deed of the respondent, and also the deeds and bills of sale from the Essex, Travis and Lockport companies were produced and delivered to the bond buyers. Such deeds and bills of sale, bonds, and mortgage or deed of trust became effective on such delivery. The bond buyers delivered the proceeds of the bonds to the Guaranty Trust Company, and such proceeds were deposited therein to the credit of the Thatcher Manufacturing Company. The respondent, by Baldwin as its president, drew a check on the fund arising from the proceeds of such bonds, in favor of the Guaranty Trust Company for $1,634,955, for payment of the three notes of Baldwin, Libbey and Ford with the interest thereon. The Guaranty Trust Company accepted the payment, marked such notes paid, and delivered said notes and the certificates of stock of the Essex, Travis and Lockport companies to Baldwin and Mandeville. The certificates for the common stock of the Woodbury Glass Company were retained by the Guaranty Trust Company under the terms of said mortgage or deed of trust. The mortgage or deed of trust, and the deeds to the respondent from the Essex, Travis, and Lockport companies were placed of record by the bond buyers and the trustee. The delivery of the deeds and bills of sale, bonds, and proceeds, mortgage or deed of trust, notes and certificates of stock, and the payment of said notes occurred contemporaneously and constituted one transaction.

PARAGRAPH THIRTY-FIVE. The dissolution of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company and the Sterling Glass Company was accomplished pursuant to the condition expressed in paragraph four of the agreement of April 10, 1920, and in compliance with the notices, requests and resolutions of the stockholders and directors of said companies as heretofore stated in these findings.

The Sterling Glass Company was dissolved September 9, 1920;
The Lockport Glass Company was dissolved October 20, 1920;
The Essex Glass Company was dissolved December 18, 1920; and
The Travis Glass Company was dissolved January 13, 1921.

PARAGRAPH THIRTY-SIX. It was admitted that the respondent acquired and now owns the common capital stock of the Woodbury Glass Company. The respondent acquired that stock through the transaction in the Guaranty Trust Company on August 28, 1919, and subsequent proceedings stated in these findings, and the capital stock of the Essex, Travis, and Lockport companies was included in the same transaction. All the common capital stock of the Woodbury Glass Company now appears of record in the names of the persons to whom such stock was issued on December 8, 1919, and January 5, 1920, as stated in paragraph twenty-two of these findings. The persons to whom the common capital stock of the Woodbury Glass Company was issued on December 8, 1919, and January 5, 1920, and in whose names such stock remains of record, claim no right, title or interest in or to such stock adverse to the right, title and interest of the respondent. All the common capital stock of the Woodbury

Glass Company is the property of the Thatcher Manufacturing Company.

PARAGRAPH THIRTY-SEVEN. The Woodbury Glass Company began manufacturing milk bottles about 1914 or 1915, and made and sold milk bottles every year thereafter until it ceased manufacturing milk bottles in 1919, and during all that time the Woodbury Glass Company was equipped for manufacturing milk bottles, and made and sold milk bottles whenever it was so disposed. Milk bottles manufactured by the Woodbury Glass Company were sold over the United States generally. On and prior to August 28, 1919, the Woodbury Glass Company had contracts outstanding for the sale and delivery of milk bottles in commerce, and subsequent to August 28, 1919, orders to the Woodbury Glass Company for milk bottles, and such outstanding contracts, were filled and completed by the Thatcher Manufacturing Company. Since August 28, 1919, the Woodbury Glass Company has not manufactured milk bottles, and there has been no competition between the Woodbury Glass Company and the respondent since that date.

PARAGRAPH THIRTY-EIGHT. The production of milk bottles was not the principal business of the Woodbury Glass Company during the years 1918 and 1919. The Woodbury Glass Company produced about thirty-four thousand (34,000) gross milk bottles in 1918, and about eight thousand (8,000) gross milk bottles in 1919 prior to August 28th. The total production of glass bottles of all kinds by the Woodbury Glass Company in 1918 was about two hundred thousand (200,000) gross, and its total production of glass bottles of all kinds during 1919 was about one hundred forty thousand (140,000) gross.

PARAGRAPH THIRTY-NINE. The total number of milk bottles produced and sold during the years 1918 and 1919 by the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the J. T. & A. Hamilton Company, and the Woodbury Glass Company is stated below. Such figures are by the gross, and do not include bottles made by the Essex, Travis, Lockport, and Hamilton companies by hand or by semiautomatic process, but only milk bottles made by said companies on Hartford-Fairmont machines. The figures below of 8,000 gross, giving the output of the Woodbury Glass Company for 1919, show the number of milk bottles produced by that company in 1919 prior to August 28.

	1918.	1919.
Essex Glass Company	57,380 gross.	87,376 gross.
Travis Glass Company	59,283 gross.	37,016 gross.
Lockport Glass Company	88,372 gross.	140,781 gross.
J. T. & A. Hamilton Company	33,087 gross.	50,828 gross.
Woodbury Glass Company	34,000 gross.	8,000 gross.

PARAGRAPH FORTY. The Thatcher Manufacturing Company is the largest producer of milk bottles in the United States, and produced and sold milk bottles during 1918 and subsequent years in the following amounts:

1918	331,055 gross.
1919	288,713 gross.
1920	833,870 gross.
1921	821,750 gross.

In the year 1919 prior to the acquisition of the capital stock of the Essex Glass Company, the Travis Glass Company, and the Lockport

Glass Company and the common capital stock of the Woodbury Glass Company, the respondent produced and sold in commerce about forty per cent (40%) of all the milk bottles manufactured in the United States. During the year 1920 the respondent produced and sold in commerce about seventy per cent (70%) of all the milk bottles manufactured in the United States. On April 23, 1920, Baldwin submitted certain information to the bond buyers in connection with the proposed bond issue of the Thatcher Manufacturing Company, and made the following statement:

"The Thatcher Manufacturing Company will have the exclusive right to make milk bottles by the only successful bottle-making machines devised, and will manufacture and sell about 90% of all the milk bottles manufactured in the United States."

PARAGRAPH FORTY-ONE. The contract of April 10, 1920, between Baldwin and the bond buyers provided that the bonds to be issued thereunder might be called on the terms and conditions and at the premium therein named. The bonds which the respondent issued under that contract have been called and retired, and the mortgage or deed of trust securing such bonds has been cancelled. The respondent now holds its properties and the properties of the Essex, Travis, and Lockport companies, and the common capital stock of the Woodbury Glass Company free of the lien or incumbrance of such mortgage or deed of trust.

PARAGRAPH FORTY-TWO. The acquisition of the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the common capital stock of the Woodbury Glass Company, on August 28, 1919, and the subsequent developments and transactions stated in these findings, constituted an acquisition by the Thatcher Manufacturing Company of the stock or share capital of said four companies within the purview and in violation of an act of Congress approved October 15, 1914 (the Clayton Act), and especially of section 7 thereof. The transfer and conveyance to the respondent of the assets, rights, and properties of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Sterling Glass Company, and the dissolution of said companies, was an artifice and subterfuge of the respondent to evade the provisions of said act of Congress and to escape the penalties thereof. By such acquisition, artifice and subterfuge the respondent secured, and now retains and enjoys, the fruits, benefits, and advantages of an illegal acquisition of the stock or share capital of competing corporations engaged in commerce.

PARAGRAPH FORTY-THREE. The effect of the acquisition by the respondent of the said stock or share capital of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the Woodbury Glass Company, as stated in these findings, was:

(a) to eliminate all competition in commerce in the milk bottle business between the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, the Woodbury Glass Company, and the Thatcher Manufacturing Company, and also between each company and each other of said companies;

(b) to restrain commerce in the milk bottle business in the sections or communities of the United States in which the Essex Glass Com-

pany, the Travis Glass Company, the Lockport Glass Company, the Woodbury Glass Company, and the Thatcher Manufacturing Company were engaged in commerce on and prior to August 28, 1919; and

(c) to tend to create a monopoly in commerce in the milk bottle business in the Thatcher Manufacturing Company.

CONCLUSION.

The acquisition by the respondent of the stock or share capital of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the common capital stock of the Woodbury Glass Company, as stated in the foregoing findings as to the facts, constituted a violation of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and especially of section 7 thereof.

By the commission:

[SEAL.] (Signed) VICTOR MURDOCK,
Chairman.

Dated this 26th day of June, A. D. 1923.

Attest:

(Signed) OTIS B. JOHNSON,
Secretary.

COMMISSION'S ORDER TO CEASE AND DESIST.

(Dated June 26, 1923.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission.

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 26th day of June, A. D. 1923.

Present: Victor Murdock, chairman, John F. Nugent, Huston Thompson, Vernon W. Van Fleet, Nelson B. Gaskill, commissioners.

FEDERAL TRADE COMMMISSION vs. THATCHER MANUFACTURING COMPANY.	Docket No. 738. Order to cease and desist.

This proceeding was regularly heard by the Federal Trade Commission on a complaint duly issued and served on the Thatcher Manufacturing Company, on the answer of the respondent thereto, on a written stipulation of facts entered into by the respondent and approved by the commission, on the testimony and evidence on file, and on the briefs and arguments of counsel. Thereupon the Federal Trade Commission made a report in writing in which it stated its findings as to the facts with its conclusion that the respondent is and has been violating the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," as shown in such findings as to the facts which are adopted and made a part hereof.

Therefore, it is ordered that the Thatcher Manufacturing Company:

1. Cease and desist from the ownership, operation, management and control of the assets, plants, properties, rights and privileges which were at the time of their acquisition in the ownership, possession, management and control of the Essex Glass Company, the Travis Glass Company and the Lockport Glass Company, together with all improvements and additions made to such assets, plants and properties up to the date of this order, which are hereby declared to have been acquired and are now held in violation of law or as a result thereof; and

2. Divest itself of all capital stock of the Woodbury Glass Company now held and owned by it, and all right, title, interest and claim therein, which said stock is hereby declared to have been acquired and is now held in violation of law or as a result thereof; and

3. Submit within three months from the date of this order, for approval by the commission, a plan for the performance by the respondent of the terms of this order, jurisdiction for this purpose being hereby retained.

By the commission: Commissioner Murdock dissenting to the form of the third paragraph of the order for the reason that the order in all respects should be definitive.

[SEAL.] (Signed) OTIS B. JOHNSON,
Secretary.

ORDER FOR HEARING ON PROPOSED MODIFIED ORDER.

(Dated November 1, 1923.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission.

At a regular session of the Federal Trade Commission held at its office in the city of Washington, D. C., on the 1st day of November, A. D. 1923.

Present: Victor Murdock, chairman; John F. Nugent, Huston Thompson, Vernon W. Van Fleet, Nelson B. Gaskill, commissioners.

FEDERAL TRADE COMMISSION v. THATCHER MANUFACTURING COMPANY.	Docket 738. Order for hearing on proposed modified order.

It appearing to the Federal Trade Commission that the order issued herein on June 26, 1923, should be modified, and that the Thatcher Manufacturing Company should be notified of the proposal to modify said order and of the day for hearing the same and any objections that may be made thereto;

It is therefore ordered that the proposed modification of the order of June 26, 1923, be set for hearing before the Federal Trade Commission at its office in Washington, D. C., on the 14th day of November, 1923, at 2 o'clock p. m., and that notice of such hearing and a copy of the proposed modified order be served on the Thatcher Manufacturing Company and its attorneys by registered mail.

It is further ordered that the Thatcher Manufacturing Company may appear at the time and place herein fixed and object to the modification of said order and show cause why said order should not be modified, if it so desire.

By the commission:

[SEAL.] (Signed) OTIS B. JOHNSON,
Secretary.

REQUEST FOR GREATER CERTAINTY IN PROPOSED MODIFIED ORDER.

(Filed November 14, 1923.)

FEDERAL TRADE COMMISSION vs. THATCHER MANUFACTURING COMPANY.	Docket No. 738. Request for greater certainty in the proposed modified order.

A copy of the proposed modified order issued November 1, 1923, having been received by the respondent, together with notice of a hearing on said order, all in the above entitled case, and the respondent being uncertain as to the meaning and effect of such proposed order, the respondent, therefore, respectfully submits herewith its request for greater certainty therein and especially as to the particular points and questions set forth below. Under said order, the respondent is directed: First, to prepare within three months and submit for the approval of the commission a plan for the performance of the terms of the order, and, second, to do and to cease to do certain things as set forth more particularly in said order.

In order either to prepared said plan or to carry out other directions of said order, it is necessary that the respondent shall have more exact information as to said order.

(1) Paragraph 1 of said proposed order directs that the respondent "cease and desist from the ownership, operation, management, and control of the assets, plants, properties, rights, and privileges which were at the time of their acquisition in the ownership, possession, management, and control of the Essex Glass Company," etc.

The assets thus ordered to be divested are above defined as those which were in the possession of the Essex and other companies "at the time of their acquisition." Those assets, during the entire period of the transactions in question, were changing daily in amount and character. Therefore, in order to comply with said order, it is necessary for the respondent to be informed as to the particular date which shall be applied as being "the time of their acquisition."

(2) The said paragraph 1, furthermore, also directs the divesting by the respondent of "all improvements and additions made to such assets," etc.

The respondent alleges that it has, out of its own funds and at its own expense, made large additions to the assets and especially to the plant equipment of the Essex, Travis, and Lockport companies during the period between August 28, 1919, and November 1, 1923, the date of the issuance of said proposed order. It therefore desires to be informed more exactly whether it is required by this order to

surrender additions and improvements upon these assets which have been so fully paid for out of the funds of the respondent's company.

(3) A further question is raised in regard to said paragraph 1 as to the exact definition of such improvements and additions by the last clause in said paragraph, which is as follows: "which are hereby declared to have been acquired and are now held in violation of law or as a result thereof." The respondent necessarily desires information as to the meaning and effect of the language just above quoted. Is this language a separate and independent, positive declaration of fact? Or, on the other hand, is it intended to modify the preceding language and to provide that only such additions and improvements shall be divested as "have been acquired and are now held in violation of law"?

And if such quoted clause is intended so to modify the preceding language and to define and restrict the additions and improvements which are to be divested, it is then further necessary that the respondent be more exactly informed as to which additions and improvements are thus declared to have been acquired in violation of law.

(4) It is necessary that the respondent be more exactly informed as to the meaning and effect of paragraph 2 of said order. After careful comparison of paragraph 2 with paragraph 1, the respondent is of the belief that all of the positive and specific action which is required of the said respondent by paragraph 2 is also fully and completely required in paragraph 1 and that the only difference between paragraph 1 and paragraph 2 is that the latter paragraph sets forth the purpose and desired result of the specific action thus ordered and that paragraph 2 is, therefore, unnecessary and superfluous.

The respondent, however, being in natural doubt as to such a conclusion, requests that it be informed as to whether there is any action required of the respondent by paragraph 2 other than or in addition to the action required by paragraph 1.

The respondent, however, further observes that in paragraph 2, the date of August 28, 1919, appears to be used as a dividing line or time applied to and defining certain rights, privileges, and assets and that in this respect paragraph 2 introduces a new element not existing in paragraph 1. The respondent, therefore, necessarily requests to be informed as to the meaning and effect of the use of said date of August 28, 1919, in the said paragraph 2 in connection with the action therein directed.

(5) As to paragraph 3, the respondent makes the same observations as set forth immediately above as to paragraph 2 and requests the same information.

(6) As to paragraph 4, the respondent makes the same observations and requests the same information as set forth above in regard to paragraph 2; that is to say, the respondent, after careful comparison of paragraphs 2, 3 and 4 with paragraph 1, believes that all the positive action required of the respondent by said paragraphs 2, 3, and 4 is fully and completely covered by the action required by paragraph 1, and therefore, concludes that paragraphs 2, 3, and 4 are superfluous; and being in natural doubt as to this conclusion, the respondent necessarily should be informed as to whether there is any action required of the respondent by paragraphs 2, 3, and 4 which is not fully and completely covered by paragraph 1.

(7) As to paragraph 5, the respondent necessarily requires to be informed as to the meaning and effect of the last clause thereof which provides "which said stock or share capital is hereby declared to have been acquired and is now held in violation of law or as a result thereof." The question here confronting the respondent is the same in principle as that raised by paragraph (3) of this request above set forth, namely, Is this clause simply a positive statement of fact? Or is it intended, on the other hand, to qualify the language immediately preceding and to act as a definition of the stock which is ordered to be divested; and if so, what is the meaning and effect of such qualification?

Dated November 14, 1923.

THATCHER MANUFACTURING COMPANY,
Respondent.

By HERBERT KNOX SMITH, *Its Attorney.*

ORDER FOR HEARING ON SECOND PROPOSED MODIFIED ORDER.

(Dated November 17, 1923.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission.

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 17th day of November, A. D. 1923.

Present: Victor Murdock, chairman; John F. Nugent, Huston Thompson, Vernon W. Van Fleet, Nelson B. Gaskill, commissioners.

FEDERAL TRADE COMMISSION v. THATCHER MANUFACTURING COMPANY.	Docket No. 738. Order for hearing on second proposed modified order.

It appearing to the Federal Trade Commission that the order issued herein on June 26, 1923, should be modified, and that the Thatcher Manufacturing Company should be notified of the second proposal to modify said order and the date for hearing the same and any objections that may be made thereto:

It is ordered that the second proposed modification of said order of June 26, 1923, be set for hearing before the Federal Trade Commission at its office in Washington, D. C., on Friday, the 14th day of December, 1923, at 2 o'clock p. m., and that notice of such hearing and a copy of the second proposed modified order be served on the Thatcher Manufacturing Company and its attorneys by registered mail.

It is further ordered that the Thatcher Manufacturing Company may appear at the time and place herein fixed and object to the modification of said order and show cause why said order should not be modified if it so desire.

By the Commission:

[SEAL.] (Signed) OTIS B. JOHNSON,
Secretary.

REQUEST FOR GREATER CERTAINTY IN SECOND PROPOSED MODIFIED ORDER.

(Filed December 5, 1923.)

HARTFORD-EMPIRE COMPANY,
Hartford, Conn., December 4, 1923.

FEDERAL TRADE COMMISSION,
Washington, D. C.

GENTLEMEN: In the matter of the Thatcher Manufacturing Company, Docket No. 738, I acknowledge receipt of a copy of the second proposed modified order to cease and desist, dated November 17, 1923, together with notice that a hearing on the same would be held at 2.00 p. m., December 14, 1923, at Washington.

I respectfully move that the respondent's request for greater certainty, dated November 14, 1923, directed at the first proposed modified order in the above-entitled case and argued before the commission on that date, be applied in principle to the said second proposed order of November 17th and the objections which are raised in said request be considered by the commission, so far as applicable, in arriving at a decision on the said second proposed order.

It is not desired to burden this record with unnecessary repetition and it is, therefore, felt by the Respondent that it is sufficient, in connection with the said Second Order, to call the attention of the commission to the objections raised to the First Order and particularly to the general principle underlying said request. That principle is, that whatever order shall ultimately be adopted, it is necessary that "the respondent" be informed as to the particular date which shall be applied as being the time of their acquisition," that is to say, the time or date upon which the assets and stocks involved in the said case are held to have been acquired.

The reasons for making this request have been sufficiently set forth in said request and in the oral argument of November 14th.

Having thus raised and brought to the attention of the commission the same questions in principle and objections to the second proposed order as were raised in the case of the first proposed modified order, and having thus made the respondent's objections to the second proposed order a part of the record, the respondent does not feel that it is necessary to burden the commission with any further oral argument thereon, and its counsel will not appear at the hearing on December 14, 1923.

Respectfully yours,

THATCHER MANUFACTURING COMPANY,
By (signed) HERBERT KNOX SMITH, *Its Counsel.*

HKS/LES.

COMMISSION'S MODIFIED ORDER TO CEASE AND DESIST AND DIVEST.

(Dated December 31, 1923.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission.

At a regular session of the Federal Trade Commission, held at its office in the city of Washington, D. C., on the 31st day of December, A. D. 1923.

Present: Huston Thompson, chairman; Vernon W. Van Fleet, Nelson B. Gaskill, Victor Murdock, John F. Nugent, commissioners.

FEDERAL TRADE COMMISSION *v.* THATCHER MANUFACTURING COMPANY.	Docket No. 738. Order to cease and desist and divest, etc. (modified).

This proceeding was regularly heard by the Federal Trade Commission on a complaint duly issued and served on the Thatcher Manufacturing Company, the answer of the respondent thereto, a written stipulation of facts entered into by the respondent and approved by the commission, the testimony and evidence on file, and the briefs and arguments of counsel. Thereupon the Federal Trade Commission made a report in writing, in which it stated its findings as to the facts with its conclusion that the Thatcher Manufacturing Company is and has been violating the provisions of an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies, and for other purposes," and especially section 7 thereof.

It is therefore ordered that the Thatcher Manufacturing Company:

1. Cease and desist from the ownership, operation, management, and control of the assets, properties, rights, and privileges acquired by it from the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company through its acquisition, ownership, and control of the stock or share capital of said companies, together with all improvements and additions made thereto from the time of such acquisition to the date hereof, which said assets, properties, rights, and privileges are hereby declared to have been acquired and are now held by the Thatcher Manufacturing Company in violation of law or as a result thereof, and cease and desist from the ownership, operation, management, and control of said assets, properties, rights, and privileges in such manner as to restore in harmony with the law the competitive conditions, with respect to said assets, properties, rights, and privileges so acquired, which existed prior to such acquisition in the manufacture and sale of milk bottles in interstate commerce, and so that no part of such assets, properties, rights, and privileges shall be held, owned, managed, or controlled hereafter by the Thatcher Manufacturing Company.

2. Divest itself of all assets, properties, rights, and privileges acquired by it from the Essex Glass Company, the Travis Glass

Company and the Lockport Glass Company through its acquisition, ownership, and control of the stock or share capital of said companies, together with all improvements and additions made thereto from the time of such acquisition to the date hereof, which said assets, properties, rights, and privileges are hereby declared to have been acquired and are now held by the Thatcher Manufacturing Company in violation of law or as a result thereof, and divest itself of said assets, properties, rights, and privileges in such manner as to restore in harmony with the law the competitive conditions with respect to said assets, properties, rights, and privileges so acquired, which existed prior to such acquisition in the manufacture and sale of milk bottles in interstate commerce, and so that no part of such assets, properties, rights, and privileges shall be held, owned, managed, or controlled hereafter by the Thatcher Manufacturing Company.

3. Divest itself of all the stock or share capital of the Woodbury Glass Company now held and owned directly or indirectly by the Thatcher Manufacturing Company, together with all right, title, interest, and claim in and to such stock or share capital, which said stock or share capital is hereby declared to have been acquired, and is now held by the Thatcher Manufacturing Company in violation of law or as a result thereof.

4. Submit within thirty (30) days from the date of this order, for approval by the Federal Trade Commission, a plan for the performance by the Thatcher Manufacturing Company of the terms of this order, jurisdiction for this purpose being hereby retained.

By the commission:

[SEAL.] (Signed) OTIS B. JOHNSON,
Secretary.

RESPONDENT'S ANSWER TO MODIFIED ORDER.

(Filed February 4, 1924.)

UNITED STATES OF AMERICA,
Before Federal Trade Commission.

FEDERAL TRADE COMMISSION vs. THATCHER MANUFACTURING COMPANY.	Docket 738. Respondent's answer to order of Federal Trade Commission of December 31, 1923.

The respondent, the Thatcher Manufacturing Company, having received the findings as to the facts and conclusion of the Federal Trade Commission, in the above-entitled cause, dated June 26, 1923, together with the modified order of December 31, 1923, respectively makes answer thereto as follows:

(1) In the opinion and belief of the respondent, the said findings of facts and also said modified order, in so far as the same find that the respondent acquired the capital stocks of either the Essex, Travis, Lockport, or Woodbury Glass Companies or any part thereof in violation of law, are not supported by the testimony in the said cause.

(2) In the opinion and belief of the respondent the said conclusion, in so far as the same sets forth that the respondent acquired said stocks or any of them in violation of law is not supported by the said testimony.

(3) The respondent does not hold or own or in any way possess or control any of the said stock of Essex, Lockport, or Travis Glass Companies. Said companies having all been dissolved before the commencement of these proceedings, the respondent, if it ever acquired the said stocks or any of them (which acquisition it denies) has long since been divested of all of said stocks, inasmuch as said stocks ceased to exist upon the respective dissolution of said companies.

(4) So much of said order to cease and desist as relates to the ownership, operation, management, and control of the assets, properties, rights, and privileges belonging or in any way pertaining to the Essex, Lockport, or Travis Glass Companies, or any one of them, or to any other company, or as relates to any improvements or additions thereto, is, in the opinion of the respondent, an order which goes beyond the jurisdiction and power of the Federal Trade Commission.

(5) The respondent, holding with all due respect, the beliefs and opinions above set forth, desires that the issue thus raised may be determined by final judicial action, in the usual course provided by law. The respondent therefore respectfully represents that it would be inexpedient for it to submit a plan for the performance of said order, as set forth in paragraph 3 of said order, prior to such final judicial determination of said issues because:

(a) The formulation and submission of such a plan would tend to prejudice the position of the respondent in the further trial of said issues.

(b) The attempt to apply and carry out such a plan, or to perform such order, prior to such final judicial determination, would necessarily result in such irrevocable changes and disturbances of property rights as would bring about damage which, in the event that such issues are finally determined in favor of the respondent, would be wholly irreparable and unjust under such circumstances.

(6) The respondent further observes:

(a) That the transactions in question and as set forth in the said findings and conclusion, covered a period at least from August 28, 1919, to July 3, 1920, or more than ten months, during all of which time said assets were constantly changing in quantity and identity.

(b) That the respondent denies that any acquisition by it, as charged, of the stocks of the Essex, Lockport, Travis, or Woodbury companies ever took place.

(c) That although, by said order, the respondent is required so to cease and desist and divest itself as to the stated assets, and so to restore a previous condition of affairs, all as of the date of "acquisition" of such stocks, nevertheless, the commission nowhere in said findings, conclusion, order, or elsewhere, fixes or has fixed, or in any way finds or determines the said date of alleged acquisition as to which date said respondent is ordered to govern its action in the premises.

(d) That, therefore, as the commission has failed to fix the date of such alleged acquisition, and as the respondent certainly can not fix said date, since it denies that such acquisition ever occurred, it is therefore impossible, for the above reasons, as well as inexpedient, for the respondent either to obey said order or to submit any plan for the performance thereof.

(7) The respondent therefore, with all respect and for the foregoing reasons, is obliged to decline to obey or perform such order or any part thereof, and does not intend to comply therewith, pending such final judicial determination of the said issues.

THATCHER MANUFACTURING COMPANY,
By —— —— *Its President.*
(Signed) HERBERT KNOX SMITH, *Its Attorney.*

Dated January 31, 1924.

UNITED STATES OF AMERICA,
Before Federal Trade Commission.

I, Otis B. Johnson, secretary of the Federal Trade Commission, hereby certify that the foregoing is a true and correct transcript of the entire record in a proceeding before the Federal Trade Commission entitled Federal Trade Commission v. Thatcher Manufacturing Company, Docket No. 738, including all testimony taken and the report and order of the Federal Trade Commission therein, as the same appears and remains on file in the office of the Federal Trade Commission.

Such transcript is certified to the United States Circuit Court of Appeals for the Third Circuit and filed therein with the application of the Federal Trade Commission for the enforcement of its order made in said proceeding on December 31, 1923.

In testimony whereof I have hereunto subscribed my name and affixed the official seal of the Federal Trade Commission at its office in the city of Washington, D. C., on the —— day of March, A. D. 1924.

[SEAL.] OTIS B. JOHNSON, *Secretary.*

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IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

PETITION—Filed March 31, 1924

To the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit:

The Federal Trade Commission hereby applies to the United States Circuit Court of Appeals for the Third Circuit for the enforcement of an order issued by the Federal Trade Commission on December 31, 1923, in a proceeding instituted by it against Thatcher Manufacturing Company entitled "Federal Trade Commission v. Thatcher Manufacturing Company, Docket No. 738," and respectfully shows:

1. Thatcher Manufacturing Company is a corporation under the laws of the State of New York, and has its principal office and place of business in the city of Elmira, N. Y. It has branch offices at Boston, Mass., Philadelphia, Pa., Chicago, Ill., and in other States. Thatcher Manufacturing Company owns and operates glass factories at Elmira, N. Y., Kane, Pa., Mount Vernon, Ohio, and in other States, and is engaged in manufacturing milk bottles at such factories, and in selling, shipping, and delivering such bottles in interstate commerce to purchasers among the several States and the District of Columbia.

2. In pursuance of the powers and duties conferred by law and in conformity with an act of Congress approved October 15, 1914, entitled "An act to supplement existing laws against unlawful restraints and monopolies and for other purposes" (the Clayton Act), the Federal Trade Commission instituted a proceeding against Thatcher Manufacturing Company and issued and served on Thatcher Manufacturing Company a complaint stating its charges in that respect, and alleging therein that Thatcher Manufacturing Company had acquired the stock or other share capital of certain corporations in violation of section 7 of said act of Congress. Upon the hearing of said complaint the Federal Trade Commission, being of the opinion that the provisions of section 7 of said act of Congress

have been violated by Thatcher Manufacturing Company, made its report in writing, in which it stated its findings as to the facts, and on, to wit, June 26, 1923, issued and served on Thatcher Manufacturing Company an order requiring it to cease and desist from such violations of law, and divest itself of the stock held contrary to the provisions of said act of Congress.

3. Thereafter, upon due notice to Thatcher Manufacturing Company as prescribed by law, the Federal Trade Commission modified the said order made or issued as aforesaid, and on, to wit, December 31, 1923, made and issued a modified order requiring Thatcher Manufacturing Company to cease and desist from the violations of law stated in said findings as to the facts, and divest itself of the stock held contrary to the provisions of section 7 of said act of Congress, in the manner and within the time fixed by said order. The said modified order was duly served on Thatcher Manufacturing Company and is still in effect. A copy of such findings as to the facts and a copy of said modified order are attached hereto as Exhibits "A" and "B," respectively, and are made a part hereof.

4. Thatcher Manufacturing Company on, to wit, February 4, 1924, filed with the Federal Trade Commission a written answer to said order of December 31, 1923, and stated therein that it declined to obey or perform such order or any part thereof, and does not intend to comply therewith pending a judicial determination of the issues involved. Thatcher Manufacturing Company has not obeyed or complied with said order, and still fails or neglects to obey such order of the Federal Trade Commission while the same is in effect.

5. Thatcher Manufacturing Company has registered under the laws of Pennsylvania as a foreign corporation engaged in or carrying on business in the State of Pennsylvania, and has filed with the Secretary of the Commonwealth of Pennsylvania a certificate designating its principal place of business in the Commonwealth of Pennsylvania in Philadelphia, and appointing the Secretary of the Commonwealth of Pennsylvania and his successor in office to be its true and lawful attorney and authorized agent upon whom all lawful process in any proceeding against it may

be served. Thatcher Manufacturing Company has and maintains a branch office in Philadelphia, Pa., and owns and operates a glass factory at Kane, Pa., where it manufactures milk bottles which it sells, ships, and delivers to purchasers in Pennsylvania and other States, and it carries on business within the Third Judicial Circuit in the purview of said act of Congress above mentioned.

6. The Federal Trade Commission hereby applies to the United States Circuit Court of Appeals for the Third Circuit for the enforcement of its order described herein, and accordingly certifies and files with this application a transcript of the entire record in the proceeding against Thatcher Manufacturing Company, including all the testimony taken and the report and order of the Federal Trade Commission.

Wherefore, the Federal Trade Commission prays that notice of the filing of this application and transcript be served on Thatcher Manufacturing Company as required by law, and that this court take jurisdiction of the proceeding and of the question determined therein, and make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming the order of the Federal Trade Commission hereinabove described, and make and enter such other orders and decrees, and grant such other, further, or general relief in the premises as may be necessary to enforce compliance by Thatcher Manufacturing Company with the provisions of said act of Congress (the Clayton Act) and as the circumstances of the case may require.

Federal Trade Commission. W. H. Fuller, Chief Counsel; A. R. Brindley, Attorney, Solicitors for Petitioner.

Duly sworn to by Otis B. Johnson. Jurat omitted in printing.

Exhibit "A" to petition omitted; printed side page 232 ante.

Exhibit "B" to petition omitted; printed side page 255 ante.

In the United States Circuit Court of Appeals for the Third Circuit

OCTOBER TERM, 1924.

FEDERAL TRADE COMMISSION, Petitioner, *vs.* THATCHER MANUFACTURING COMPANY, Respondent.	No.————

REPLY OF THATCHER MANUFACTURING COMPANY

To the Honorable Judges of the Circuit Court of Appeals for the Third Circuit:

The Thatcher Manufacturing Company, the Respondent in this case, replies to the application of the Federal Trade Commission for enforcement of an order of said commission, and, answering the said application, says:

DIVISION I.— GENERAL DENIAL.

1. The Respondent in the above entitled cause, the Thatcher Manufacturing Company, denies so much of said Petition, Findings, Conclusion and Order as alleges that it, the Respondent, acquired any of the capital stock of the Essex Glass Com-

pany, the Travis Glass Company, the Lockport Glass Company or the Woodbury Glass Company or of either of them within the purview and in violation of the Act of Congress approved October 15, 1914 (the Clayton Act) or of Section 7 thereof.

It further denies that the Respondent acquired any of such stock in such a manner or with such effect as to substantially lessen competition between the Respondent and any one of said four companies, or as to restrain commerce as defined in said Act in any section or community, or as to tend to create a monopoly in any line of commerce.

And the Respondent further denies the allegations of said Findings that any transfer, transaction or conveyance in which the Respondent had a part was either an artifice or subterfuge to evade the provisions of said Act; or that the Respondent secured, retains or enjoys the fruits, benefits or advantages of any illegal acquisition of such capital stock.

2. The Respondent denies all the allegations of Paragraphs 42 and 43 of said Findings, and the Conclusion thereof. It denies that any of the foregoing allegations referred to in this Division are supported by the evidence in the case.

DIVISION II.—AS TO THE ORDER

1. The Respondent represents that if it ever owned or acquired any of the capital stock of the Essex Glass Company, the Travis Glass Company, or the Lockport Glass Company, it no longer holds or owns any of such stock, and did not hold or own any of such stock when the original Complaint of the Petitioner, dated March 1st, 1921, was filed

against the Respondent, because, as the Respondent alleges, and as is expressly found by the Petitioner in Paragraph 35 of said Findings, all of said three companies were dissolved on or before January 13, 1921, and none of the capital stocks thereof were in existence when said Complaint was filed. The Respondent therefore represents that it is not now possible for it to take any action in regard to any of the stocks of the said Essex, Travis or Lockport Companies.

As to the Woodbury Glass Company, the Respondent still holds at least the equitable title to its stock. But the relations between this company and the Respondent were in a different class; there was never any substantial competition between them; and the matter of the Woodbury Company is treated separately in Division IV, Sections 8 to 11, pp. 19 to 21 hereof.

2. The Respondent denies that the said Petitioner has any lawful power, right or jurisdiction to make or in any way enforce the Order issued against the Respondent and set forth in said Petition as Exhibit B. The Respondent more particularly represents that so much of said Order as relates to assets, properties, rights or privileges, or as relates to any other subject matter than the ownership of capital stock and the divesting of such ownership, or as attempts to require any action by the Respondent other than the divesting itself of capital stock, constitutes an attempt to exercise powers not conferred upon the Petitioner or lawfully exercisable by it.

3. The Respondent therefore represents that in so far as said Order relates or requires action

in regard to either the said Essex, Travis or Lockport Glass Companies, said Order is void and of no effect in that the powers therein attempted to be exercised are not within the jurisdiction of the Petitioner.

4. The Respondent further represents that said Order is imposible of performance, for the following reasons:

(a) The Petitioner, in its Findings and Conclusion alleges that the Respondent acquired the said capital stocks in violation of the said Clayton Act. But in no place and in no way in said Findings, Conclusion or Order or elsewhere does the Petitioner designate or in any way indicate or intimate with any degree of certainty the date or time at which such acquisition is alleged to have occurred. The Petitioner sets forth in its said Findings a series of numerous and complex transactions beginning at least as early as August 28, 1919, and extending to and beyond July 3, 1920, a period of more than ten (10) months. It thereupon merely finds that " The Respondent acquired that stock (Woodbury) through the transaction in the Guaranty Trust Company on August 28, 1919, *and subsequent proceedings stated in these findings;* and the capital stock of the Essex, Travis and Lockport Companies was included in the same transaction " (Findings Paragraph 36). It further finds that the acquisition of stock in question occurred on "August 28, 1919, *and the subsequent developments and transactions stated in these findings* " (Findings Paragraph 42).

But the Petitioner consistently refrains throughout said Findings and Conclusion, from

designating in any more certain manner than within said period of ten months, the date upon which such acquisition is alleged to have occurred. It thus leaves the date of such charged acquisition broadly uncertain, and assignable to any date within such period of ten months or more.

(b) The said Order, nevertheless, requires the Respondent to "cease and desist from the ownership **** of the assets, properties, rights and privileges acquired by it, from the Essex Glass Company, the Travis Glass Company and the Lockport Glass Company **** together with all improvements and additions made thereto *from the time of such acquisition* to the date hereof." (Tr. p. 255.)

(c) The Order further requires the Respondent to "cease and desist from the ownership **** of said assets, properties, rights and privileges in such manner as to restore in harmony with the law the competitive conditions with respect to said assets **** which existed *prior to such acquisition.*" (Tr. p. 255.)

(d) The Order further requires the Respondent to "divest itself of all assets, properties, rights and privileges acquired **** together with all improvements and additions made thereto *from the time of such acquisition* to the date hereof." (Tr. pp. 255-6.)

(e) The Order further requires the Respondent to "divest itself of said assets, properties, rights and privileges in such manner as to restore in harmony with the law the competitive conditions with respect to said assets **** which existed *prior to such acquisition.*" (Tr. p. 256.)

(f) The Order further requires the Respondent to submit a plan for the performance of the terms of said Order.

(g) The Respondent represents that competitive conditions so referred to in said Order, the physical condition and title of the assets, properties, rights and privileges so referred to; and the improvements and additions made thereto, were all of them changing greatly daily and from time to time during the ten months covered by the purview of the Findings, to wit, from August 28, 1919 to July 3, 1920, (which ten months constitute the narrowest and most definite limits within which the alleged acquisition of stock can possibly be located or assigned under the terms of said Findings).

(h) Nevertheless, as appears in said Order, many, if not all of the things thereby required to be done by the Respondent, are conditioned and defined as to their scope, form and substance by reference to *the date of the alleged acquisition* of such stocks.

5. The Respondent therefore represents that it is impossible for it either to submit such a plan, or to perform said Order, in view of the foregoing facts and of such changing conditions, and because the substance of such plan and of such performance is necessarily determinable only as of some definite date, but is, by said Order, defined and prescribed as of a date which is left wholly indefinite and undeterminable.

6. The Respondent further represents that, as appears in its two Requests for Greater Certainty as to both the Proposed Modified Order, and the

Second Proposed Modified Order (Tr. pp. 251, 254), the Respondent, before the filing of the petition in this case, fairly and plainly raised with the Petitioner the objections set forth in this Division as to such uncertainty of governing date, and further amplified the same in open oral hearing, requesting greater certainty as to such date of alleged acquisition, and that the Petitioner had fully and plainly before it for consideration the said objections to such Order, before the Petitioner finally issued the same.

(Note: — All italics on the quotations cited above in this Division are by the Respondent).

(The Transcript itself is herein indicated by the abbreviation " Tr.").

DIVISION III. — DENIAL OF PARTICULAR ALLEGATIONS

The Respondent denies the following particular allegations set forth in the following named paragraphs of the said Findings and denies that said allegations or any of them are supported by testimony.

1. In Paragraph 5 — The Respondent denies that on August 2, 1919 the Woodbury Glass Company was selling milk bottles in commerce in competition with other persons, firms and corporations similarly engaged.

2. In Paragraph 5 — The Respondent denies that on or for several weeks prior to August 28, 1919 or at any time thereafter, the Woodbury Glass Company was in competition with the Respondent in the sale, transportation or delivery of

milk bottles in interstate commerce. And the Respondent represents that all competition in the milk bottle business between said Woodbury Glass Company and the Respondent ceased entirely for a substantial period before the inception of the transactions set forth, and never existed thereafter.

3. In Paragraph 10 — The Respondent denies that it is in any way substantially true that the Owens and Hartford-Fairmont bottle making machines were on August 28, 1919, or for a long period prior and subsequent thereto, or are now, the only successful entirely automatic bottle making machines operated as complete units. And as to such allegation, the Respondent represents that the testimony shows that successful entirely automatic bottle making units (other than the machines of the Owens and the Hartford-Fairmont Companies) were, during all of such period and still are, readily obtainable on the open market by combining certain feeding machines and forming machines so on the market (Tr. pp. 118-119).

4. Paragraph 16 — The Respondent denies that F. E. Baldwin, E. D. Libbey and William Ford, or either of them discounted any notes, as therein alleged, " on behalf of the Stirling Glass Company " or that the proceeds of said notes and the five hundred thousand dollars of the Stirling Glass Company were deposited in the Guaranty Trust Company, as therein alleged, " to the credit of the Stirling Glass Company." The Respondent denies that there is the slightest testimony supporting either of such allegations as to such discount " on behalf of the Stirling Glass Company "

or as to any such deposit " to the credit of the Stirling Glass Company." And the Respondent as to such allegations represents that, on the contrary, all of the voluminous testimony in the Transcript relating to such discount and deposit transaction, shows without the slightest divergence or contradiction, that such discounting and deposit were wholly on behalf of said three first named individuals.

And if these allegations be still insisted upon by the Petitioner, the Respondent is prepared to submit further evidence from the actual book entries of the Guaranty Trust Company, wholly disproving such allegations.

5. Paragraphs 17 and 18. In so far as it is implied in such Paragraphs that the stocks referred to there were acquired by the Respondent, the Respondent denies the same.

6. Paragraph 18. — The Respondent denies the allegation therein that the " Respondent conducted these four companies under their own management until January 1, 1920 " and also the allegation therein that " thereafter such companies were managed and directed by the Thatcher Manufacturing Company." And the Respondent further represents that there is no testimony supporting such allegations, and that, on the contrary, it appears in several places in said testimony (Tr. pp. 96-97; 115; 211) that prior to January 1, 1920, these companies continued under their own management, and after that date Mr. F. E. Baldwin personally " directed it from Elmira " (p. 97) " Under my (Baldwin's) control "; " I (Baldwin) managed it " " I directed it " (p. 115).

" Being directed by me (Baldwin) from Elmira " (p. 211); that Mr. Baldwin so testified in several places, and there is no testimony contradicting him on this point.

7. Paragraph 19 — In so far as it is implied in this Paragraph, in the first sentence thereof, that the stocks there referred to were acquired by the Respondent, the Respondent denies the same.

8. Paragraph 24 — The Respondent admits that Mr. F. E. Baldwin made the report quoted in this Paragraph. But the Respondent represents that insofar as it can be interpreted to imply an acquisition by the Respondent at that date of the stocks in question, such implication is misleading and ambiguous and due simply to the carelessness in use of language common in business transactions, and furthermore, that any such implied admission contained therein cannot bind the Respondent, and certainly cannot alter or modify in any way the actual legal status of owership, title or acquisition then existing by reason of the established facts relevant thereto.

9. Paragraph 26 — This Paragraph cites an order dated April 8, 1919, from the Illinois Glass Company to the Woodbury Glass Company to ship certain milk bottles, and thereon in conclusion alleges " It does not appear that such order or instruction was ever changed or discontinued." The allegation was made for the purpose of showing that the Woodbury Glass Company was in competition with the Respondent on August 28, 1919, four and one-half months later, but the Respondent represents that such order of April 8, 1919 has no probative bearing on conditions as of

August 28, 1919, unless there is positive testimony showing (a) that said order was not discontinued and (b) that it was being acted upon at the beginning of the transaction in question, about August 28, 1919; and the Respondent represents that no such testimony exists, and that the positive proof thus lacking cannot be supplied by the mere allegation that there is no proof to the contrary.

10. Paragraph 34.— The Respondent denies the allegation contained in the last sentence of this Paragraph, to the effect that the delivery (a) of the deeds, bills of sale and mortgages, and (b) of the proceeds of the bonds and (c) of the certificates of stock and the notes, were simultaneous. The Respondent represents that necessarily, as a matter of law and the orderly transaction of business, there must first have occurred (a) the delivery of the deeds and bills of sale to the Respondent in order to give it title to the assets covered thereby and about to be mortgaged by it; then (b) the delivery of the trust deed or mortgage, with its accompanying bonds, to the bankers; then (c) the delivery of the proceeds of said bonds by the bankers to the Respondent; then (d) the payment to the bankers by the Respondent of the original purchase notes from such proceeds, and finally (e) the delivery by the bankers to the Respondent of such paid-up notes, and the stock certificates which were the collateral thereof; and that whatever the physical course of the handling of these papers, the delivery and taking effect of the deeds and bills of sale so as to vest title to the assets in the Respondent must, in contemplation of law, and as governed by the intent of the parties, have pre-

ceded the delivery of the stock certificates to the Respondent.

11. Paragraph 36 — The Petitioner here alleges that acquisition of the stocks in question took place " through the transaction in the Guaranty Trust Company on August 28, 1919 and subsequent proceedings stated in these findings." It thereby expressly places the date of said acquisition somewhere or anywhere during a period of over ten months, without giving any more definite indication of such date. This method of statement and pleading throws upon the Respondent an intolerable burden, to wit, the asserting and establishing a negative over such prolonged period. During this period the other facts (other than acquisition) which relate to violation of the Clayton Act (namely, as to competition, restraint of trade, and tendency toward monopoly), and which other facts must coincide with the fact of acquisition in order to establish such violation of law, were continually and materially changing. It is impossible for the Respondent to conceive, work out, and sufficiently contravert all possible combinations of such two sets of facts, which combinations might be claimed to have existed at one time or another during such period. The Respondent therefore declines to assume the burden of denying any such indefinite allegation, and restricts itself, on this point, to the general denial set forth in Division I., Section 1 above.

12. Paragraphs 42 and 43. The Respondent denies each and every allegation herein.

13. Conclusion — The Respondent denies the entire Conclusion.

DIVISION IV.— RELEVANT FACTS PROVEN, BUT NOT FOUND IN SAID FINDINGS

The Respondent represents that there are many facts, having an important and in some cases a decisive bearing upon the issues in this case, which facts were fully established by the testimony, but which were not found or in any way stated as proven by said Findings and Conclusion; and Respondent therefore further respectfully represents that such facts should be found and stated as part of this case as follows:

1. That the transaction in question, which first took form on August 28, 1919, was wholly the private, personal, individual venture of three men Messrs. Libbey, Ford and Baldwin, except insofar as the Respondent, by investing $250,000. in Stirling Glass Company stock, took a subordinate and indirect minority interest in the venture, amounting to less than a ten per cent indirect interest.

2. That the following facts (indicative of such individual and personal character of the venture) were proven.

(a) That out of the total cash raised to purchase the stocks in question on August 28, 1919, to wit, $2,110,000., the said three individuals furnished $1,830,000. or over 86 per cent (Tr. p. 95) wholly raised upon their own private personal notes, bearing only their own individual endorsements.

(b) That all of the said three men made themselves individually liable on all the purchase notes,

in the sum of $1,610,000. (Tr. p. 95) in order to acquire such stocks, and yet no one of them took or received in any way any guarantee, assurance or agreement of any sort from the Respondent in any way relieving them of such liability, nor did any of them have any recourse whatsoever to the Respondent therein.

(c) That Mr. Baldwin, by virtue of the contract of August 28, 1919 (Tr. p. 36, Exh. G, Sec. 3) agreed under certain circumstances to assume personally the entire liabilities involved, of nearly $2,000,000, and later, on December 21, 1920, did so assume them and had no recourse to or assurance from the Respondent relieving him of such liability. (Tr. pp. 122, 198.)

(d) That after Mr. Libbey's withdrawal from the venture, Mr. Baldwin gave anxious and long continued efforts toward financing these liabilities as his own purely personal affair. (Tr. pp. 110, 122, 137, 144-5, 199, 216-217.)

(e) That after such withdrawal, Mr. Baldwin exercised individually and personally all the indicia of ownership or control of the said four Companies, named the new transferees of their stocks, and their new directors, and controlled the management of their affairs. (Tr. pp. 110, 111, 116, 150, 154, 211, 224.)

(f) That neither Mr. Baldwin nor any of the said three individuals used or availed themselves in any way of the money, credit, knowledge or other powers of the Respondent in making purchase of said stocks, except insofar as the Respondent did invest as a minority stockholder in the Stirling Glass Company.

(g) That Respondent when such purchase of stocks was made on August 28, 1919, took only a small and indirect minority interest in the matter, and was wholly a subordinate and non-controlling factor therein. (Tr. p. 95.)

(h) That for nearly the entire period of the transaction, to wit, from before August 28, 1919 to June 3, 1920, there does not appear in evidence a single official vote, act or authorization on the part of the Respondent or of its Board of Directors, relating in any way to the transactions presented in this case, or to the said four companies.

(i) That Respondent never had record title to any of the four stocks in question. (Tr. pp. 127, 157-8, 180.)

(j) That Stirling Glass Company never had record title to any of said stocks. (Tr. pp. 127, 180.)

(k) That neither Respondent nor Stirling Company ever issued or attempted to issue or caused to be issued or used any proxies relating to any of said stocks, and never attempted to exercise any control over them. (Tr. p. 127.)

(l) That before the certificates of these stocks were delivered to Respondent on July 3rd, 1920, all the assets, properties, rights and privileges of the Essex, Travis and Lockport Companies had become legally vested in Respondent, and legally divested from said three companies. (Tr. pp. 99, 110, 111, 132.)

(m) That the only relation or connection of any sort ever existing between Respondent and the stocks of any of the said four companies was

wholly comprised in the following state of facts.

(1) Respondent owned from August 28, 1919 to June 4, 1920, exactly one-half of the Stirling Company. (Tr. pp. 95, 159.)

(2) Stirling Glass Company had, by virtue of the contract of August 28, 1919, an option to acquire said stocks by paying off the "purchase notes." (Tr. p. 37, Exh. G, Sec. 1.)

(3) Stirling Glass Company never paid off these notes and never exercised the option. (Tr. p. 122).

(4) On December 21, 1919, upon the withdrawal of Messrs. Libbey and Ford, the entire liabilities in connection with the purchase, fell upon Mr. Baldwin, by virtue of the said contract, (Tr. pp. 110, 121, 122, 123, 132, 137, 138, 144, 198, 215), and as a necessary consequence he also then took over the right to acquire said stocks upon paying off said notes, and the similar option to Stirling Company, above mentioned, was divested from Stirling and vested in Mr. Baldwin. (Tr. p. 37, Exh. G, Sec. 3.)

(5) That said option of paying off said notes was never exercised by anyone until July 3, 1920, (and then by Respondent) and before such payment, all of the assets of the Essex, Travis and Lockport Companies had vested in Respondent, and at the time of the delivery of such three stocks, there were no assets or properties whatsoever covered by or behind such stocks.

(6) That any acquisition of the stocks of the Essex, Travis and Lockport Companies on July 3, 1920 had and could have had no effect whatsoever upon competition, restraint of trade or cre-

ation of monopoly, because such acquisition was an incident to the purchase of assets, and not a means or a cause of such purchase.

(n) That Mr. Baldwin, from the beginning of the whole transaction, and especially after coming into personal control of the four companies in December 1919, was honorably, sedulously and consistently careful to avoid entangling or committing the Respondent Company in any way in the rights or liabilities relating to these stocks. His course to that end is evidenced by numerous items of the testimony. (Tr. pp. 110, 145, 146-7, 198-9) and especially on page 218, in the conversation between Mr. Mandeville, Vice President of the Respondent, and Mr. S. G. H. Turner, one of its directors:

> "Q. Mr. Baldwin testified this morning that there was no conference, agreement or understanding of any sort which would have allowed him to command the Thatcher Company to take over this liability. Is this your understanding?"
>
> "A. Yes, sir; I talked with some of the directors of the Thatcher Company about it."
>
> "Q. What was the nature of that discussion?"
>
> "A. The particular discussion that I have in mind was with Mr. S. G. H. Turner, who was a director and president of the Second National Bank, and represented in the board the J. S. Fassett interest in the Thatcher Company. He said that it had been discussed among the directors and

that it was impossible for the Thatcher Company to take over these companies because it would swamp them if it did."

"Q. So both you and Mr. Baldwin laid aside the possibility or the propriety of having the Thatcher Company assume this liability?"

"A. Yes, sir, because we could not tell how to meet it; and directly we found it could be financed, we took it up again with the Thatcher Company."

The Respondent did not enter the deal at its inception, either directly or by intention, and came in later only after a number of months, as an afterthought, after the liabilities had been financed, and then only as the recipient of the *assets* of the said four companies.

3. That the entire plan, at its beginning on August 28, 1919, of the parties interested in the transaction in question, was uncertain, as to its possible future development; that such future might then take either of two courses, and that the plan, as finally crystallized in the contract of that date, was therefore framed in two alternatives. (Tr. pp. 98, 121, 136, 144-5, 147, 157, 199, 223.)

4. That the first of these alternative possibilities thus provided for was the event where the desired rights of the Hartford-Fairmont Company should be secured. In this case, Mr. Libbey was to be the dominating factor; the securing of the Hartford-Fairmont rights was his governing motive; the Stirling Glass Company was to be expanded to take in all acquisitions (including possibly taking over the Respondent Company also),

and to assume all liabilities. (Tr. pp. 93, 146.)

The second of the alternatives was the event where the desired purchase from Hartford-Fairmont Company should fail; and in this case, Mr. Libbey, his main interest in the deal having thus been disappointed, was to withdraw, and thereupon, inasmuch as someone had to be prepared to take over the deal and assume the liabilities involved, Mr. Baldwin was so to take over and assume (Tr. p. 121).

5. That the first alternative failed, and the second alternative became the only course, and Mr. Baldwin therefore became the sole legatee of the rights and liabilities created up to that point, namely on the tenth day after withdrawal of Libbey and Ford, i. e. December 21, 1919. (Tr. pp. 40, 41, 113.)

6. That such a situation was contemplated by the parties on August 28, 1919, is the only satisfactory explanation of the contract of that date, and all the conduct of affairs thereafter bears out such explanation.

7. That at all times between December 21, 1919 and July 3, 1920, Mr. Baldwin was in complete personal control of the Essex, Travis, Lockport and Woodbury Companies, and could have transferred all or any of the stocks, or assets or other properties of these companies to any corporation or person whom he might have selected, and no other corporation or person could have prevented such transfer. (Tr. pp. 110, 116, 150, 154.)

8. That the case of the Woodbury Glass Company differs from the cases of the Essex, Travis, and Lockport Companies, because all the assets

of said last three companies were transferred to the Respondent, and the corporations dissolved; while the assets of the Woodbury Company were not transferred, the company still exists, and the Respondent is the owner, in equity at least, of its stock, and that therefore the competitive situation between Respondent and Woodbury Company is relevant, as follows: —

9. That Respondent made and sold only milk bottles. That Woodbury's main business was in condiment ware. (Tr. pp. 90, 169.) It had at one time a small and diminishing business in milk bottles, with an obsolete equipment, (Tr. pp. 177, 184, 189), but in April 1918, over a year before the inception of the transaction in question, it contracted to license and operate Hartford-Fairmont feeders which would take up all of its "tank" (manufacturing) capacity, and which, by the express terms of the licenses, could not be used in making milk bottles. (Tr. p. 189..) It had thus already in 1918 decided to go out of the milk bottle business.

10. That in 1918 and 1919 the total production of milk bottles in the United States was over 1,000,000 gross (Tr. p. 200) and that of the Respondent over 300,000 gross. (Tr. pp. 128, 186.) That the total milk bottle production of the Woodbury Company in 1918 was 34,000 gross; in the first half year of 1919, 8,000 gross, (Tr. p. 189); that it ceased such production entirely in July 1919 (Tr. p. 188), and that at the inception of the transaction, August 28, 1919, (and the earliest possible date on which the alleged acquisition can be assumed to be charged), Woodbury Company was

making no milk bottles and had on hand only a remnant stock of mis-branded odd sizes amounting in all to between 500 and 1000 gross. (Tr. p. 188.) That this remnant of a discontinued production was so insignificant that neither Mr. Baldwin nor Mr. Mandeville knew of it until three years later, when they actually heard the testimony in this case. (Tr. pp. 117, 179, 180, 184, 185, 221-2.)

11. That the foregoing facts as to the competitive conditions between Respondent and Woodbury Company all relate to the date of August 28, 1919, and that if the date of the alleged acquisition of stocks, is intended to be claimed as having occurred at any later date within the ten months over which the Petitioner's Findings distribute it, then such remnant of competition would be correspondingly reduced.

DIVISION V.— PRACTICAL EVIDENCE AS TO RESTRAINT AND MONOPOLY.

1. The Respondent further represents that there is no evidence of any substantial lessening of competition, real restraint of commerce or tendency toward monopoly resulting from the acquisition by the Respondent of the assets of the Essex, Lockport or Travis Companies, (or in any connection with the Woodbury Company). There nowhere appears any of the decisive indicia of such real lessening, restraint or monopoly. There is no evidence whatsoever of any of those results disadvantageous to the public which always accompany, and are the best proof of the real ex-

istence of such evils. The evidence shows positive advantages arising to the public from the combination in question, and no disadvantages: (a) Competition increased instead of lessening: (b) There was more freedom of commerce instead of less; (c) Prices of milk bottles were reduced, in the face of greatly advanced costs; (d) Not a single instance of unfair or oppressive business conduct or competition was discovered.

2. More specifically, these facts were as follows:

Competition in the manufacture of milk bottles has actually increased since the acquisition of said assets. There were at the time of taking of testimony (August 14, 1922), a large number of outside concerns which were making milk bottles, about fifteen being enumerated on page 109 of the Transcript. While Respondent had at that time only 11 furnaces in all making milk bottles (Tr. p. 110), there were in operation on that date 19 outside competing furnaces. (Tr. pp. 120, 121.)

The said transaction and acquisition made such a decrease in the comparative costs of manufacture and such savings derived therefrom as to result in important reductions of price of the articles produced by the Respondent. (Testimony of Mr. Baldwin, President of the Respondent Company.)

> (Tr. p. 107) "I think the gentleman that represented your commission here found by examination of the books and records that the average increase in the cost of material, labor and freight was 350 per cent. We increased the price of bottles about 100 per cent."
>
> "Q. What year was that?"

"A. That was during the year 1920 and 1921. No, 1920."

(Tr. p. 124.)

"A. I paid $2. a hundred for soda ash — I used to get it for 45 cents."

"Q. How about sand?"

"A. We had a contract for sand in the east for $1.15 a hundred and it went up to $3.50 a hundred. ** Coal — we had a contract for $3. and $3.50. We bought six cars of coal that we paid from $11. to $13. for at the mine. Freight increased just 100 per cent ** Labor increased a good deal more than 100 per cent and crating increased a full 300 per cent.

"Q. What is the largest single item of cost of material?"

"A. Soda ash is the most important item. *** next is coal and crating."

"Q. Now, the c[illegible]se of your prices, Mr. Baldwin. Can yo[illegible] give me an outline of them?"

"A. I can not. Our records would show we increased the price twice, I think, and got it up to about 100 per cent of what it was before the war, and then we started on the 1st of May by decreasing it — the 1st of May, 1921. We have made four reductions."

"Q. How does it compare now with the pre-war prices?"

"A. It is a little above the pre-war prices."

"Q. How much above?"

"A. I could not say how much, but if the freight was down to where it was *** and we took that off, we would be down as low as we were before the war ***."

"Q. To say nothing, however, of the still existing higher cost of materials ***."

"Q. And you have made these reductions. Could you have made them with the still large cost of materials, had it not been for the increased efficiency of your plant?"

"A. We could not."

Although costs of all the factors going into milk bottles increased greatly during the war period, there was no such corresponding increase in the price of milk bottles to the public and there were subsequently important reductions of such prices. During the war period, costs of important materials for milk bottles increased as follows: —

Soda ash	400%
Sand	300%
Coal	300%
Freight	100%
Labor	100%
Crating	300%

Prices, on the other hand, were increased twice during that period, but with a total increase of only about 100%. Then, beginning with May 1, 1921, prices were reduced four times, bringing them down to a figure which would be as low as the pre-war prices if the freight charges alone were back on the pre-war level.

No evidence whatsoever has been submitted or suggested showing any unfair or oppressive business practices by the Respondent.

The Respondent therefore denies that the evidence in the case supports the findings upon which said Order is based. It further denies that the Respondent acquired any capital stock of any company in violation of the Act of Congress approved October 15, 1914 (The Clayton Act). It further denies that the Federal Trade Commission had power to make or enforce the Order in question.

WHEREFORE, Respondent prays that the said petition be dismissed at the cost of the Petitioner.

THATCHER MANUFACTURING COMPANY,

By.....

Its Attorney.

State of New York }
County of } ss.

Francis E. Baldwin, being duly sworn, according to law, deposes and says that he is President of the Thatcher Manufacturing Company, Respondent above, and its agent in this behalf, and that the averments of fact contained in the foregoing reply of the Thatcher Manufacturing Company are true and correct, as he verily believes.

.....

Sworn and subscribed to before me this .....

day of ..... 1924.

.....

Notary Public.

My Commission expires.....

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1924

No. 3167 (List No. 39)

FEDERAL TRADE COMMISSION, Petitioner,

vs.

THATCHER MANUFACTURING CO., Respondent

And afterwards, to wit, on the 2nd day of December, 1924, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable Joseph Buffington, Honorable Victor B. Woolley and Honorable J. Warren Davis, Circuit Judges, and the Court not being fully advised in the premises, takes further time for the consideration thereof.

And afterwards, to wit, on the 16th day of April, 1925, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1924

No. 3167

FEDERAL TRADE COMMISSION, Petitioner,

vs.

THATCHER MANUFACTURING COMPANY, Respondent

On Application for Enforcement of an Order of the Federal Trade Commission

Before Buffington, Woolley, and Davis, Circuit Judges

WOOLLEY, Circuit Judge:

The Federal Trade Commission asks this court to enforce an order it has made against the Thatcher Manufacturing Company, the respondent, commanding it to cease and desist from the ownership and control of the assets and properties of three corporations which it obtained through its acquisition of their capital stock, to divest itself of the assets and properties so acquired, and to divest itself of the stock or share capital of a fourth corporation. The proceedings were begun by a complaint filed by the Commission under Section 7 of the Clayton Act (38 Stat. 730) charging the respondent, first with the acquisition of the entire capital stock of four competing corporations, and, next, with its acquisition of all the assets and properties of

three of those corporations through its stock control, the effect of which was substantially to lessen competition, restrain commerce and create in the respondent a monopoly in the business of manufacturing milk bottles. The order was made on elaborate findings of fact based mainly on a stipulation as to facts entered into by the parties and on other matters obtained from records which the respondent freely opened and made available. There is therefore little dispute about the facts and no trouble in deciding that the Commission's findings are, except in one matter, sustained by the evidence. The controversy turns on the inferences properly to be drawn from the facts and therefore on the single question whether the transactions were in violation of Section 7 of the Clayton Act. As they were highly complicated we shall, in stating the case, give only enough to show their character and effect.

Of the corporate actors in this case the Thatcher Manufacturing Company, the respondent, is a corporation of the State of New York with its principal office and manufacturing plant at Elmira, New York, and branch manufacturing plants in West Virginia and Ohio. It was engaged in the manufacture of milk bottles by automatic bottle-blowing machines under an exclusive patent license from the Owens Bottle Company.

The Essex Glass Company was a corporation of the State of Ohio having its principal office at Mount Vernon, Ohio, and plants in Ohio and West Virginia.

The Travis Glass Company was a corporation of the State of West Virginia with its principal office and manufacturing plant at Clarksburg, West Virginia, and a branch plant at Cedar Grove, West Virginia.

The Lockport Glass Company was a corporation of the State of New Jersey with its principal office and manufacturing plant at Lockport, New York.

The Woodbury Glass Company is a corporation of the State of Indiana with its principal office and manufacturing plant at Winchester, Indiana.

The J. T. and A. Hamilton Company was a corporation of the State of Pennsylvania with its principal office and manufacturing plant at Pittsburgh, Pa.

All these corporations were engaged in manufacturing milk bottles and selling them in interstate commerce in competition with one another and with other concerns similarly engaged.

The Owens Bottle Company was a corporation of the State of Ohio, with factories in Ohio, West Virginia and Indiana, and was engaged in the manufacture and sale of glassware but not in the manufacture of milk bottles. It had acquired the exclusive right to use the Owens bottle-blowing machines in the United States and had granted the respondent an exclusive license under the patents for the manufacture of milk bottles.

In 1917 the Hartford-Fairmont machine appeared in the art. This was another automatic bottle-macking machine and it quickly demonstrated that it was the equal and in some respects the superior of the Owens machine. These two were the only successful entirely

automatic bottle-making machines then in use. Exclusive licenses to use the Hartford-Fairmont machine for manufacturing milk bottles were secured by the Essex, Travis, Lockport and J. T. & A. Hamilton Companies. The Woodbury Company secured a non-exclusive license to use the Hartford-Fairmont machines for making bottles of other kinds.

Early in 1919, I. T. Axton, president of the Woodbury Company, conceived a plan of merging the Woodbury Company with the companies that held Hartford-Fairmont licenses. Axton controlled the common stock of the Woodbury Company and secured options on the entire capital stock of the Essex, Travis and Lockport companies and an option on the machine, license and milk bottle business of the J. T. & A. Hamilton Company. Failing in his attempt to merge these corporations, Axton approaches F. E. Baldwin, president of the respondent corporation, and suggested that he take over his options and carry out the merger. Baldwin consulted H. C. Mandeville, a director of the respondent, and also E. D. Libbey, president of the Owens Bottle Company, to that end. The Owens Bottle Company offered no objection to the plan and, being interested in competitive bottle-making machines, Libbey agreed to go into the deal and assist in raising the necessary money, provided he could acquire the Hartford-Fairmont patents. Baldwin, Mandeville and Libbey then took over the Axton options and proceeded to exercise them. Up to this time the respondent had not appeared in the transaction. This was in August, 1919, the options expired on September 1, following. With some haste Mandeville secured the incorporation of the Sterling Glass Company, Inc. to serve as a temporary means through which to exercise the options and effect the merger. This company was incorporated under the laws of New York with an authorized capital of $600,000. Stock for $500,000 was issued at par for cash. One half of its issued capital stock was taken by E. D. Libbey and the other half by the respondent. The sum of $2,110,000 in cash was required to carry out the options. Of this, $500,000 was available from the Sterling Company. The balance, or $1,610,000, Baldwin, Libbey and William Ford, the latter a business associate of Libbey, arranged to borrow from the Guaranty Trust Company of New York on their individual promissory notes, each note to be endorsed by the makers of the other two so that all were equally liable. On August 28, 1919, the stockholders of the Essex, Travis, Lockport and Woodbury Companies and Baldwin, Libbey and Ford met at the office of the Guaranty Trust Company. The precise order of the events which followed is difficult to ascertain. They were in substance as follows: Baldwin, Libbey and Ford gave the Trust Company their notes for which they received money which they turned over to the Sterling Company, and the Sterling Company, then being in possession of the full purchase price, paid the same to the holders of the stock of the Essex, Travis, Lockport and Woodbury Companies and received their certificates endorsed in blank, which it turned over to the Trust Company as collateral security for the notes. With the balance of the money, the Sterling Company (or Baldwin) paid for the outright purchase of the machines, license

and rights of the Hamilton Company. As the order under review does not require the respondent to divest itself of the physical properties purchased from the Hamilton Company, we shall not consider the part of the transaction affecting that company nor shall we mention it except when necessarily incidental to the other phases of the transaction.

Immediately after the capital stock of the four companies had thus been acquired, Baldwin appeared before the vendors and requested the officers of the four companies to remain in their respective positions and continue the operation of the companies until further directed. The respondent controlled these corporations under their respective managements until January 1, 1920, when their entire business was taken to Elmira and thereafter managed directly by the respondent. After the capital stock of the Essex, Travis, Lockport and Woodbury Companies had been acquired, Baldwin, Libbey, Ford and the Sterling Company entered into an agreement in which, by preamble, they stated that it was their purpose at a later date to organize a permanent company to take over the plants and assets of the four companies together with the plants and assets of the respondent, and to that end they agreed that the Sterling Company should save harmless the other parties to the agreement from all liability arising from the notes and that "upon the payment of the said notes all of the collateral thereto shall become the property of the Sterling Company;" that if Libbey should not acquire the Hartford-Fairmont patents, or if the parties should fail to agree upon the form, capitalization, or organization of the permanent company, Libbey and Ford might at any time, on notice to Baldwin, retire from the agreement; that in the event of their retirement, Baldwin should assume all liability under the contract and all liability upon the notes and repay Libbey the $250,000 he had invested in the capital stock of the Sterling Company; and that, thereafter, Baldwin should proceed with the organization of the permanent company in such manner as he might see fit.

Shortly after entering into this agreement Libbey found that he could not acquire the Hartford-Fairmont patents and thereupon served notice on Baldwin of his intention, and the intention of Ford, to retire from the transaction. On the retirement of Libbey and Ford the plan for a permanent corporation, into which all the companies including the respondent were to be merged, came to an end and a new situation arose in which there were outstanding individual obligations of Baldwin, Libbey and Ford amounting to $1,610,000 due the Trust Company, the obligation of Baldwin to buy Libbey's $250,000 of stock in the Sterling Company and his obligation to assume Libbey's and Ford's indebtedness. There was also outstanding an obligation on the part of the Sterling Company to save harmless all the parties to the agreement from all liability arising from the making and endorsing of the notes. The Sterling Company had no money, for it had expended its whole capital of $500,000 in supplying a part of the purchase money for the stock of the four companies. Here the respondent again entered the transaction and paid Libbey $250,000 and interest thereon, and took up Libbey's

stock in Sterling Company and received the certificates. The respondent then held $500,000 of the full paid capital stock of the Sterling Company, all of which had entered into the purchase of the stock of the competing companies. With the Trust Company loan unpaid, the certificates for the stock of the Essex, Travis, Lockport and Woodbury (held by the Trust Company as collateral) were sent to Elmira and there formally cancelled and new certificates issued to persons nominated by Baldwin, and then, on being endorsed in blank, they were delivered to the Trust Company as collateral security for the loan. All the new certificates were issued to four persons, Baldwin, Mandeville, Niver and Collins, officers and employees of the respondent corporation. Baldwin was elected president and Collins secretary of the four companies. None of the persons to whom the stock was issued paid any money for it or gave any other consideration.

The relation of the respondent with the four companies continued financially intimate. It advanced $40,000 to the Woodbury Company and $25,000 to the Travis Company, and received $75,000 from the Essex Company which it mingled with its funds and treated as its own. In an annual report which Baldwin made to the stockholders of the respondent corporation he referred in terms of congratulation to the merging of the Essex, Travis, Lockport and Woodbury companies with the respondent and its purchase of the Hartford-Fairmont milk bottle machine and business of the Hamilton Company. Without quoting this communication it is enough to say that it states without doubt that the transactions of purchase and merger were made by the respondent corporation and were greatly to its financial advantage.

The indebtedness upon the three notes given by Baldwin, Libley and Ford was still running, and in order to meet it when it should mature an agreement was made by Baldwin with two bond houses of New York. This agreement provided that the respondent should acquire all "the assets and business" of the Essex, Travis and Lockport Companies and all the shares of stock of these companies then owned by the Sterling Company (all the stock of the latter company being owned by the respondent), and that it should also acquire all the common stock of the Woodbury Company then owned by the Sterling Company, and that the respondent should assume all the obligations of all of these corporations and that, thereafter, they should be dissolved. It was further agreed that the respondent should increase its capitalization from $1,000,000 to $1,625,000 and should issue $2,000,000 of bonds to which the bond houses would prescribe. All this was eventually, and contemporaneously, carried out at a meeting at which all interested parties were present. At this meeting the Essex, Travis and Lockport Companies, by separate bills of sale, for the consideration of one dollar, conveyed all their property and assets of every kind to the respondent. The respondent delivered to the bond houses $2,000,000 of bonds secured by its mortgage or deed of trust covering all the property which it originally owned and all the property which it had just acquired by the bills of sale. The bond houses paid the respondent for the bonds. With

this money the respondent paid the Trust Company the amount due upon the Baldwin, Libbey and Ford notes, and the Trust Company surrendered the shares of the four companies which it held as collateral. Some days later the Essex, Travis and Lockport Companies (together with the Sterling Company) were dissolved. The stock of the Woodbury Company was delivered as additional security for the bonds. In due course the bonds were called and retired and the mortgage or deed of trust given to secure them was cancelled. The respondent now holds the entire common capital stock of the Woodbury Company, and all the properties of the Essex, Travis and Lockport Companies free of the lien of the mortgage or deed of trust and free of any obligation arising from the recited transactions.

The provision of Section 7 of the Clayton Act which the Federal Trade Commission found that the respondent corporation had violated reads as follows:

"No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

The Commission found that the respondent had violated this section by its "acquisition of the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the common capital stock of the Woodbury Glass Company, on August 28, 1919, and in the subsequent developments and transactions stated in these findings" consisting mainly of the "transfer and conveyance to the respondent of the assets, rights and properties" of these companies, and their subsequent dissolution, and held that "these were an artifice and subterfuge of the respondent to evade the provisions of the said Act of Congress and to escape the penalties thereof." The respondent, on the other hand, thought it discerned in the Clayton Act a difference between the acquisition of stock of a competing corporation and the acquisition of its physical properties and, accordingly, conducted the transactions along the line of that theory. It now complains that the Federal Trade Commission, by its order and by its petition here presented for its enforcement, is endeavoring to enlarge the words and expand the meaning of Section 7 of the Act from the acquisition of stock of a competing corporation, which in terms is prohibited, to the acquisition of property of a competing corporation, which is not prohibited in terms. However this may be, the record in this case does not raise a question involving this distinction but presents squarely the question whether by the transactions recited the respondent, in violation of the literal terms of the provision, did "acquire, directly or indirectly," the stock of two or more corporations, "where the effect of such acquisition, or the use of such stock

by the voting or granting of proxies or otherwise, may be" to bring about the forbidden situation in commerce.

For defense on this issue the respondent admits, of course, that it acquired the physical properties of the named competing corporations but denies that it ever acquired their stock, directly or indirectly. It takes the position that the adventure was Baldwin's; that it was mainly with money borrowed on the credit of his name that the stock was bought; that on the withdrawal of Libbey and Ford the whole liability for meeting the notes and the whole responsibility for putting through the transaction were his; that the stock was transferred from the vendor holders to his nominees; that the shares were never transferred to the respondent nor was there ever any record evidence of its ownership; that the stock and the administration of the purchased corporations were likewise within the control of Baldwin to do with as he might see fit; that the most the respondent acquired in respect to the stock of the several corporations was the equitable title after these corporations had conveyed all their assets and properties to it; and that these conveyances made the stock whose equitable title the respondent had thus acquired valueless, because no assets or properties of any kind stood behind it. And finally, the respondent contends that the Act was not violated because the stock when acquired was not the stock of competing corporations within the sense of the Act because these corporations in disposing of their physical property to the respondent had also sold to it their licenses for bottle-making machines, without which they were not then able to do business and compete in commerce.

We have not been persuaded to this view of the transaction. To obtain the correct view we shall look at the transaction through the eyes of the statute. Primarily at least the statute (Section 7) deals with acquisition of stock of one corporation by another, in terms it is silent as to the acquisition of property of one corporation by another. So, in this case, we shall look for stock acquisition, not for acquisition of property. Acquisition, as that word is used in the statute, means ownership; ownership involves title; and title is of two kinds, legal and equitable. In inquiring into the respondent's ownership of the stock of the four companies we shall look at the title of the stock and follow it through its devolution. In doing this we first find title in the original unnamed owners who have for money considerations sold their shares and divested themselves of all title. When the title left them it went to somebody else. Who was it? This question may be answered by finding whose money moved the title from the original owners. Of this money $500,000 was that of the Sterling Company, given it by the respondent and Libbey for the express purpose of buying these shares. The balance of the purchase money was obtained from the Trust Company by Baldwin, Libbey and Ford on their personal notes. On payment for the stock the original owners delivered the certificates endorsed in blank for negotiable purposes. Delivered them to whom? This is not clear; but it is clear that, on delivery, the certificates were lodged with the Trust Company as collateral

security for the loan to Baldwin, Libbey and Ford and that the title on leaving the original owners passed to someone else. To whom? This is difficult to answer, and we think not necessary to answer just now, for the reason that the transaction of purchase had not been completed and was then, by the terms of the agreement, liable to transformation, as afterwards occurred. Baldwin had not contributed to the purchase any money of his own although admittedly the purchase money was in part raised on the credit of his name and in part with funds of the Sterling Company, a subsidiary of the respondent. Whether Baldwin and the Sterling Company thus became part owners of the legal or equitable title of the shares is also unnecessary to decide, for the next thing that happened was the transfer of the stock (while still held by the Trust Company as collateral) from the names of the original owners to names of men mentioned by Baldwin, of whom he himself was one. Concededly the other three men had contributed nothing to the stock purchase and never had title in themselves, unless, indeed, they held title for the real owners of the shares, whoever they were.

In this situation the respondent was operating the four companies from its central office, directing its affairs, making financial contributions to and receiving financial returns from some of them.

The next event touching title was the withdrawal of Libbey and Ford from the transaction, leaving Baldwin or someone else to pay their notes when they matured. Baldwin did not meet these obligations but arranged with the respondent to do it. And this the respondent did by first augmenting its assets by acquiring the physical assets and license rights of the three competing corporations and the common stock of the fourth and issuing its bonds for $2,000,000 secured thereby, and with the proceeds of the bonds paying the personal indebtedness of Baldwin, Libbey and Ford. Thus the respondent with its own money directly supplied the larger part of the purchase money, and with its own money, through the Sterling Company, indirectly paid the balance of it. So in the last analysis the whole purchase price of the stock of the four competing corporations was paid by the respondent company with its own funds. While throughout the transaction Baldwin and the respondent kept the name of the respondent off the certificates for the shares of the four companies, the fact remains that it was with its money that the shares were in part initially bought and at last wholly paid for. It is difficult to see how the use of the respondent's money in the purchase of the shares did not draw to it the ownership of the shares. The interposition of the Sterling Company, created by the respondent to spend its money in the purchase, was not the act of a legal entity which can blind the court to the real transaction or bar the operation of the statute. "Courts of equity will look behind a corporate fiction, and if it clearly appears that one corporation is merely a creature of another, the latter holding all the stock of the former, thereby controlling it as effectively as it does itself, it will be treated as the practical owner of the corporation, when necessary for the purpose of doing justice." United States vs. United Shoe Machinery Company, 234 Fed. 127;

278 U. S. 451; Brown v. Pennsylvania Railroad Company, 247 Fed. 669; 250 Fed. 513. "If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons." United States vs. Milwaukee Refrigerator Transit Company, 142 Fed. 247.

The respondent paid no money (or, to be specific, it paid only three dollars) for all the assets and plants of three of the competing corporations. It made this large purchase on merely nominal considerations by "use" of its control over those corporations, and its control was effected only because of its ownership of their stock. Baldwin did not own the stock because he had never paid any money for it. If, however, the shares belonged to Baldwin by virtue of their purchase with money partly raised on his note, then the shares still belong to him, for there is no evidence that he has sold them to the respondent. Yet the respondent admits that it holds the equitable title to the shares for the reason that finally the shares were paid for with its money.

Limiting our decision to stock acquisition as distinguished from property acquisition, we are of opinion that the respondent acquired the stock of the Essex, Travis and Lockport Companies in a manner inhibited by Section 7 of the Clayton Act if the effect of the transaction was substantially to lessen competition between the corporations, or to restrain commerce, or to create a monopoly. We shall not review the evidence on the effect of the transaction. It will be enough to say that it sustains the finding of the Commission that the effect was that which the statute was enacted to prevent.

To carry out the purpose of the statute the Commission therefore made an order commanding the respondent (a) to cease and desist from the ownership and control of the assets and properties of the three corporations it had acquired through its acquisition of their stock; (b) to divest itself of the assets and properties thus acquired and of the control of the said stock; and (c) to submit for the approval of the Commission a plan for the performance of the order, jurisdiction for that purpose being retained. The respondent maintains that, aside from the merits of the case, the order is invalid first, in that it exceeds the powers conferred upon the Commission by the Act, and second, in that it is, in the circumstances, impossible of performance. It bases its contention first on the statute which it says limits the authority of the Commission to a command addressed to the offending corporation to divest itself of the "stock" of another corporation acquired in violation of the Act, and next on the difficulty, or impossibility, of disassembling the assets of the corporations acquired from assets of its own. On the first position we hold that the Act is remedial, not punitive. Western Meat Company vs. Federal Trade Commission, 1 Fed. (2d) 295, rehearing Fed. Therefore the sole purpose of a valid order of the Com-

mission must be to remedy an unlawful situation. In effecting the remedy, however, the Commission must meet the situation as the offending corporation has made it. If it created the situation so as to defeat the statute, the offending party cannot be heard to say that thereby the Commission is helpless and the law unenforcible. The familiar principle that a person can not profit by his own unlawful act applies. Not in every case can the Commission reach property acquired through stock acquisition, but where, as in this case, the offending corporation has stripped the stock of its value and where, accordingly, the mere divesting itself of the stock would leave the corporation in full possession of the entire fruits of the forbidden transaction, we are of opinion that the statute empowers the Commission to carry out its purpose by extending its hand to the property. Nor do the acts of the offending corporation in commingling the assets of the corporation whose stock it has acquired in violation of the statute with assets of its own raise a legal barrier against remedying an evil which the law was expressly enacted to prevent. Just how, in a practical way, this shall be done in the case at bar the Commission purposely left open by the last paragraph of the order which directed the respondent to submit a plan to that end. As no plan has been submitted, none is before us. Therefore, with the way to do the thing we are not presently concerned.

The order of the Commission in so far as it relates to the stock and to the assets and properties of the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company is approved and its enforcement directed.

Not every acquisition by one corporation of the stock of a competing corporation is forbidden by Section 7 of the Clayton Act. The Act, by express terms, says that Section 7 does not apply to a corporation "purchasing such stock * * * and not using the same to bring about, or in attempting to bring about, the substantial lessening of competition." Testing the transaction (as it affected the Woodbury Company) by the whole of Section 7, the evidence discloses that before the respondent acquired the stock of the Woodbury Company that corporation was engaged chiefly in the manufacture of condiment and whiskey bottles and that its manufacture of milk bottles was very small, amounting annually to about 8,000 gross out of a total production in the United States of over 1,000,000 gross. The evidence also shows that it was gradually getting out of the milk bottle business and that, indeed, before the transaction in question arose it had determined to do so. When its stock was acquired the respondent took over its outstanding contracts, one or two in number, and filled them. The respondent's real object in acquiring the Woodbury stock, as we see it, was to acquire its patent license, that being a non-exclusive license to use the Hartford-Fairmont feeders in the manufacture of condiment bottles, fruit juice bottles, fruit containers, fruit jars, and glass-ware for carbonated soft drinks, branches of the glassware business in which the respondent was not engaged and therefore in which it was not a competitor. While the effect of the transaction upon the Woodbury Company was to stop its manufacture of milk bottles and accordingly to

end its competition in milk bottle manufacture, the number of milk bottles the Woodbury Company made was so inconsiderable that the lessening of competition thereby was not substantial. We are therefore of opinion that the evidence does not sustain the Commission's finding that the respondent's acquisition of the stock of the Woodbury Glass Company substantially lessened competition between the corporations, restrained commerce and tended to create a monopoly. That part of the Commission's order is therefore not approved and will not be enforced.

BUFFINGTON, J.:

In view of this case involving a far reaching question of jurisdiction I note my dissent. The original purpose Baldwin had in view, and which he finally carried out, was the acquisition and absorption of the several corporations involved by the purchase of their entire properties. If, in so doing, he suppressed competition the remedy for such wrong was vested in the courts and not in the trade commission.

The necessity for the prompt exercise of the options upon such properties, the unlooked for situation created by the withdrawal of his associates and the unloading of the whole financial burden on him together with the complicated stock handlings made necessary in the successful financing of his original plan, gave the matter the appearance, but not the reality of a stock acquisition plan, but in my judgment the transaction as a whole, in its original plan, its execution and effect, was an acquisition of property, not of stock, and jurisdiction over it, if amenable to the law, was vested in the Federal Courts and not in the Federal Trade Commission. Such being my view I feel it my duty to respectfully record my dissent.

Endorsements: 3167. Opinion of the Court by Woolley, J. Dissenting Opinion by Buffington, J. Received & Filed Apr. 16, 1925. Saunders Lewis, Jr., Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCT. TERM, 1924

No. 3167 (List No. 39)

FEDERAL TRADE COMMISSION, Petitioner,

vs.

THATCHER MANUFACTURING COMPANY, Respondent

Petition for Enforcement of Order of the Federal Trade Commission of the United States

This cause came on to be heard on the transcript of record from the Federal Trade Commission of the United States and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed that the order of the said Federal Trade Commission in so far as it relates to the stock and to the assets and properties of the Essex Glass Company, the Travis Glass Company and the Lockport Glass Company, is approved and its enforcement directed; but, insofar as it relates to respondents' acquisition of the stock of the Woodbury Glass Company, it is not approved and will not be enforced.

Philadelphia, April 16th, 1925.

Victor B. Woolley, Circuit Judge.

Endorsements: 3167. Order Directing Enforcement of F. T. C. Order in Part. Received & Filed Apr. 16, 1925. Saunders Lewis, Jr., Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1925

No. 3167

FEDERAL TRADE COMMISSION, Petitioner,

vs.

THATCHER MANUFACTURING COMPANY, Respondent

To the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit:

Comes now the Federal Trade Commission, the petitioner herein, and respectfully shows to the Court as follows:

1. That the decree made and entered in this cause on April 16, 1925, contains the following provisions, to-wit: "it is now here ordered, adjudged and decreed that the order of the said Federal Trade Commission in so far as it relates to the stock and to the assets and properties of the Essex Glass Company, the Travis Glass Company and the Lockport Glass Company is approved and its enforcement directed; but in so far as it relates to the respondent's acquisition of the stock of the Woodbury Glass Company, it is not approved and will not be enforced." Said decree has been duly entered and contains no other provisions.

2. That since such decree was made and entered this petitioner has discovered that said decree is indefinite, and omits any specific direction that the respondent do or perform any particular act in complying with said decree, and fails to provide that said decree shall be performed in the manner or within the time required by that part of the order which this court affirmed. The said decree does not contain all orders or provisions which are necessary to carry out the purposes of the law, and does not retain jurisdiction of the cause until complete enforcement is accomplished.

Wherefore The Federal Trade Commission moves the court that the said decree be rectified or corrected by incorporating therein the particular terms and requirements of that part of the order which has been affirmed and also by requiring the respondent to submit to this court a plan for its performance of such decree, and that the court make and enter a decree in substantially the form and terms of the proposed decree attached hereto, or that the court will make and enter such orders and decrees as may be necessary to dispose of the merits of this proceeding, and to carry out the purposes of the law, and such other orders and decrees as may be meet and proper in the premises.

A. R. Brindley, Attorney for Petitioner.

Endorsements: 3167. Petition to rectify decree. Received & Filed Apr. 28, 1925. Saunders Lewis, Jr., Clerk.

In the United States Circuit Court of Appeals for the Third Circuit

FEDERAL TRADE COMMISSION, Petitioner *v.* THATCHER MANUFACTURING COMPANY, Respondent	No. 3167

PETITION FOR HEARING

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Third Circuit:

The Thatcher Manufacturing Company, the Respondent in the above entitled case, respectfully requests your Honorable Court that a rehearing be granted upon the decision rendered by the Court on April 16, 1925. The Respondent makes such request after careful reflection upon said decision. The Respondent, while seeking, of course, to protect what it conceives to be its own lawful right, feels also that its obligations in the matter are increased by something in the nature of a public duty resting upon it, in requesting such rehearing.

The Respondent believes that it so happens:

(a) That this case constitutes a leading precedent in a field of considerable public importance.

(b) That it involves an underlying public question as to the powers and jurisdiction, not only of an important public agency, the Federal Trade Commission, but also of the courts themselves.

(c) That the proposed disintegration of the Respondent's business must necessarily have far reaching effect upon the public interest in an important industry.

(d) That if this case shall finally be taken before the Supreme Court of the United States upon certiorari, it is highly desirable that the questions therein be fully presented, free from all obscurity and misapprehension.

(e) Finally it seems to the Respondent that the circumstances of the case do not call for any immediate or summary action and no public interest will suffer by allowing reasonable time for complete consideration.

Having in mind these considerations of public concern, as well as its own private interest, the Respondent believes that this case was so complex, the evidence so obscure, the train of events so difficult to follow, that a peculiar duty rests upon Respondent to make the same clear, and that it has thus far evidently failed in doing so.

It therefore respectfully points out its specific grounds for requesting such re-consideration, as follows:

I.

In the opinion filed by your Honorable Court in rendering the said decision, there appear the following statements: (For the convenience of the Court, the said opinion is attached hereto as Exhibit "1." The pages of the opinion referred to below are the pages of that Exhibit.)

(a) In Exhibit "1," p. 26 as follows —"Baldwin had not contributed to the purchase any money of his own."

(b) On page 28 — "Baldwin did not own the stock because he had never paid any money for it."

(c) On page 27 — " So in the last analysis, the whole purchase price of the stock of the four competing corporations was paid by the Respondent Company with its own funds. * * * The fact remains that it was with its money that the shares were in part initially bought and at last wholly paid for."

The Respondent respectfully represents that the statements above quoted indicate that there were left in the minds of your Honorable Court certain serious misapprehensions as to the true facts — for the following reasons:

It is found in said opinion (page 19) that " Baldwin, Libbey and Ford gave the Trust Company their notes for which they received money." These notes aggregating $1,610,000, represented over three-quarters of the purchase price of the stocks. Of this, Baldwin, for example, had borrowed by such note, $650,000, and this sum was used in part in acquiring the stocks. The Respondent therefore respectfully represents that this money, borrowed in such manner or in any other manner, became, nevertheless, the money of the borrower. Therefore, Mr. Baldwin did use his own money as part of the purchase price. Also, the same is true of the moneys borrowed at the time by Messrs. Libbey and Ford.

So that the Respondent respectfully represents that the source of the great bulk of the purchase money which moved the title from the original owners, came from these three individuals and that the title, therefore, must have passed to them and to their subsequent assignee and contractual successor.

Such alleged misapprehension as to the source of said purchase money was and is vital to the decision of the Court, inasmuch as the Court remarks in the said opinion (page 26) — " When the title left them (the original owners) it went

to somebody else. Who was it? *This question may be answered by finding whose money moved the title from the original owners.*" (Italics by respondent.)

II.

On page 26 of said opinion, it is stated — "The title on leaving the original owners passed to someone else. To whom? *This is difficult to answer and we think it not necessary to answer just now.*" (Italics by Respondent.)

The Respondent further respectfully represents that the foregoing statement just quoted is, it believes, also based upon a misapprehension, resulting mainly from the original misapprehension first above referred to, as to the source of the purchase money. Respondent represents that it is, indeed, necessary to determine to whom that title then passed, in order to determine the nature of the later transaction on July 3, 1920, and that such determination can be arrived at.

The title to the said stocks in the beginning having, in the view of the Respondent, been paid for by money owned and furnished by Baldwin, Libbey and Ford, first passed to these three men. Then, in December 1919, there took place a transformation by virtue of the withdrawal of Libbey and Ford from the transaction. It was the obvious intent and effect of the contract that Libbey and Ford might completely disassociate themselves from the transaction.

Under the express conditions of the contract for such contingency, the only possible result of such withdrawal and disassociation was to place in Baldwin all the equitable rights previously held by Libbey and Ford, because Baldwin, upon such withdrawal, assumed the complete and ultimate liabilities of all parties, including Sterling Com-

pany, for the purchase price. This result was necessary in point of equity, because of such assumption of ultimate liability. The original contract of August 28, 1917 (Transcript p. 37, Exh. "G") provides in Section Third "In the event of Libbey's retirement as aforesaid, Baldwin agrees to assume all liability hereunder, and all liability upon the said notes, or in connection therewith, of each and all the other parties hereto." This, of course, includes an assumption of Sterling's liabilities, because it was one of the "parties hereto." Certainly nothing passed to Thatcher Company by such withdrawal.

The Respondent therefore represents that if it is true, as it alleges, that these stocks were acquired with money belonging to, although borrowed by, the three men in question, then the title to the said stocks was in them, in the first instance, and later, in their successor, Mr. Baldwin, and was certainly not in Thatcher Company and that therefore, Thatcher Company did not and could not have furnished the purchase price of the stocks on July 3, 1920 as stated in said opinion, inasmuch as that price had already (at least the dominating majority of it) been furnished by said three men ten months earlier. And the Respondent therefore represents that the only thing that Thatcher Company did on July 3, 1920 was to furnish to Baldwin the money to pay his notes, which money was the purchase price of the assets of the companies owned by Baldwin and purchased by Thatcher Company.

Respondent asks the indulgence of the Court if it attempts to enlarge briefly upon this transaction of July 3, 1920.

If this procedure had been carried out in full, it would have been as follows:

(a) Baldwin, with the concurrence of his nominee co-stockholders, would have caused each of

the three companies to deed its assets to Thatcher Company. This, indeed, is what was actually done, in the orders issued by these stockholders to the respective companies, as stated below on pp. 7-8.

(b) Thatcher Company would then have paid to each of the companies its proper share of the agreed selling price of such assets ($2,000,000 in all).

(c) These companies, by liquidation dividend, would then have paid this money to Baldwin (their only real stockholder).

(d) Baldwin would then have paid this money to the lending bank to take up his obligations.

Instead of going through this roundabout procedure, Thatcher Company, upon receiving the deeds, turned over the price of the assets direct to the lending bank, thus merely "cutting across lots" to exactly the same final result.

There was nothing improper or evasive in this short-cut method. It occurs in practically every real estate transaction where outside lienors are interested. An adjustment of all credits and debits is made round the table with all parties represented, and the final balances are paid direct.

III.

In said opinion (page 28) it is stated — "The Respondent paid no money (or, to be specific, it paid only three dollars) for all the assets and plants of three of the competing corporations. It made this large purchase on merely nominal consideration by 'use' of its control over those corporations and *its control was effected only because of its ownership of their stock.*" (Italics by Respondent.)

Respondent respectfully represents that the foregoing statement is likewise a misapprehension arising out of the earlier misapprehension referred

to, namely, the misapprehension to the effect that the purchase money, because borrowed, did not become the property of the borrowers and was not their money.

And Respondent respectfully represents that inasmuch as the said money did belong to the borrowers; and as the equitable title to the stocks was, in the first instance, acquired by these three men, and later, by necessary force of their contract, passed to their successor, Baldwin, therefore, title was in them and their successor. Therefore, the transfer of assets on July 3, 1920 to Respondent could not have been caused by Respondent through any title which it had to the stocks. But Respondent says that it was caused by Baldwin, who did then have such title, who with his nominees, held the legal record title and actual title, and who alone was able to cause and did cause such transfer of assets to Respondent and did so in consideration for Thatcher Company's furnishing the money to Baldwin to pay his obligations.

And the Respondent further, in support thereof, refers to the transcript of the record which shows that the said transfers of assets were all voted by the stockholders of the three companies *prior* to any payment by Thatcher Company to Baldwin or to the Trust Company in discharge of the notes, as follows:

(a) On *June 7, 1920*, all the stockholders of Travis Company,— Travis, Robinson, Baldwin, Collins and Niver,— requested in writing the Travis Company " to have all of its property and assets as a going concern assigned, transferred and set over to us or our nominee or nominees " (Transcript p. 63, Exh. " S ").

On *June 12, 1920*, the stockholders of Travis Company unanimously voted to direct the officers to make such transfer (Transcript pp. 63-65, Exh. " T ").

On *June 25, 1920*, the said officers executed such transfer (Transcript p. 66, Exh. " V ").

(b) Exactly similar action was taken by the other two companies as follows:

Request to Essex Company made June 7, 1920 (Transcript p. 67, Exh. " X "). Vote of stockholders June 11, 1920 (Transcript pp. 68-70, Exh. " Y "). Bill of Sale June 17, 1920 (Transcript pp. 70-71, Exh. " Z-1 ").

(c) Request to Lockport Company made June 7, 1920 (Transcript p. 72, Exh. " Z-3 "). Vote of stockholders June 24, 1920 (Transcript pp. 72-77, Exh. " Z-4 "). Bill of Sale June 25, 1920 (Transcript pp. 75-76, Exh. " Z-6 ").

(d) All of the stockholders making these requests and votes were Baldwin and his nominees. In no case was Thatcher Company one of them, as plainly appears in said Exhibits.

So that said votes to sell and said bills of sale were all made and caused by Baldwin and his individual and nominee co-stockholders. And, further, all these votes and bills of sale were made in *June 1920*.

The opinion of the Court is understood by Respondent to hold that the Respondent acquired title to these stocks on July 3, 1920 by paying off the notes. Such prior votes and transfers of assets could not have resulted from such subsequent stock acquisition, because when the votes and bills of sale were made, the Respondent did not in any way control the stock. Respondent, on the contrary, represents that on that date and since December 1919, Baldwin owned and controlled the stock because he paid for it and that these transfers of assets so voted, were caused by him as an inducement or consideration to Thatcher Company to furnish him the money which he used to pay off his note obligations. Or, in other words, that Baldwin, holding such control and being under

such obligations, in fact sold these assets to Thatcher Company for a sum sufficient to pay off the obligations.

Respondent therefore represents that the statement in the said opinion (page 28) above quoted, namely, "The Respondent * * * made this large purchase on merely nominal consideration" is likewise based upon a misapprehension. Respondent actually paid full value of about $2,000,000 on July 3, 1920 for the *assets and properties* which were caused to be conveyed to them by Baldwin who controlled the stocks, in return for the money which Baldwin used in paying off his note obligations.

The documents in the case all deal with a transfer of assets, and none with transfer of stock.

IV.

In said opinion (page 27), it is stated — "Baldwin did not meet these obligations but arranged with the Respondent to do it." Respondent represents that there is a misapprehension appearing in this sentence, if it is intended to mean that Baldwin never actually paid or caused the payment of them directly. Baldwin actually paid in $650,000 out of his own pocket, which he had borrowed. He then assumed all the other obligations; went through a long and anxious period, attempting to secure successful financing; kept Thatcher Company free from all commitments; (see Transcript pp. 198, 218); obtained and fully exercised complete control over the three companies and finally, having succeeded in procuring the necessary financial backing, caused the three companies which he controlled, to sell their assets to Thatcher Company to obtain the money for liquidating the note obligations. Thus he did, by his own money and credit, and through his own unaided financing, meet these obligations, by sell-

ing the *assets* of the companies which he controlled.

V.

Summarizing the foregoing representations of the Respondent, they all are directed in substance at one absolutely vital point, so recognized by the Court in its opinion, namely, the question of who furnished the purchase money and therefore acquired the title to the stocks?

The Court recognizes that the stocks were acquired by someone on August 28, 1919 (opinion, pages 19 and 26). On that date, there was paid out three-fourths of the total purchase price by Libbey, Baldwin and Ford — borrowed it is true — but still necessarily their property.

Title to the stocks having thus passed originally, must have been in some person or persons until July 3, 1920. It could not remain in vacuo. Thatcher Company during that period paid out in all only $500,000 or less than one-quarter of the purchase price. The balance, therefore, $1,610,000 came from elsewhere. Respondent represents that this must be attributed to Libbey, Baldwin and Ford who borrowed it. But in any event, it *did not* come from Thatcher Company during those ten months. Therefore, during those ten months, title was definitely in someone and *not* in Thatcher Company. It could only have been in those three men who borrowed and furnished the money and who later certainly caused the legal and record title to be placed in Baldwin alone and thus finally gave him complete control.

Baldwin then demonstrated this control

(a) By naming the new stockholders.

(b) By naming the directors and officers.

(c) By a long and finally successful financing campaign.

(d) By making the bond agreement, which

was made by him and not by Thatcher Company.

Therefore, when Thatcher Company finally furnished the money to Baldwin to pay the notes, it had not supplied the original purchase price. This had been supplied ten months earlier — it must have been in order to move the title out of the original owners. All that Thatcher Company did was to purchase from Baldwin the assets of the companies. It was not, however, the same thing as supplying the purchase money, which is a very different thing.

Respondent represents that the fact that the title to the stocks was first in the three men and then in Baldwin alone, makes their conduct plain. Otherwise, it is wholly inexplicable. Otherwise, why should Baldwin, Libbey and Ford involve themselves in an undoubted joint liability for $1,610,000? Why should Baldwin sign a contract to assume, under contingencies (which did occur), all this great liability? Why should these stocks all be re-issued to his nominees? Why should he name the directors and officers? Finally, how could Thatcher Company, if it acquired title to stock on July 3, 1920 (which is denied), cause a transfer of assets which was voted in the preceding month?

VI.

Respondent further respectfully represents that it is true that the evidence in part indicates that Mr. Baldwin thought that Thatcher Company acquired equitable ownership of the stocks after July 3, 1920. But Respondent, in this respect, represents that such statements by Baldwin were simply a careless use of inexact language, referring to a negligible question and that he meant that Thatcher Company, by the purchase of assets, then secured everything that the stocks represented, and that the stock certificates, merely

waste paper then, came along with the rest. In fact, no one knew what had become of them.

At all events, it is of little consequence what Baldwin said. The question is, what did Thatcher Company do? The documentary evidence on this point expressly refers only to assets.

VII.

In said opinion, on page 27, it is stated — "In this situation, the Respondent was operating the four companies * * * and receiving financial returns from some of them." Respondent respectfully represents that it was not at the time referred to, " receiving financial returns " in the sense of any participation in the profits of these other companies, but that all that it did receive was an ordinary business loan from one of them (Transcript p. 164). There were only ordinary credit and debit transactions between these companies, and nothing indicating any right to profits or dividends.

VIII.

On page 29 of said opinion, it is stated:

> " We are of opinion that the Respondent acquired the stock of the Essex, Travis, and Lockport Companies in a manner inhibited by Section 7 of the Clayton Act if the effect of the transaction was substantially to lessen competition between the corporations, or to restrain commerce, or to create a monopoly. We shall not review the evidence on the effect of the transaction. It will be enough to say that it sustains the finding of the Commission that the effect was that which the statute was enacted to prevent."

The Commission in its findings (Transcript page 242, paragraph 25) expressly found as follows:

> "All competition between the Respondent and the Essex Glass Company, the Travis Glass Company and the Lockport Glass Company ceased not later than January 1, 1920, and no competition has since existed between any of said companies."

The Respondent understands the said opinion to decide that the respondent acquired the stocks of the said companies on July 3, 1920. The Respondent respectfully represents that upon the above quoted facts so found by the Commission, such acquisition, coming six months after the complete cessation of all competition, could not therefore have had any of the effects upon commerce which are prohibited by the statute and which must exist to constitute a violation thereof.

And the Respondent, following its argument earlier set forth herein, respectfully represents that no illegality as to the Respondent resulted by reason of the said cessation of competition on January 1, 1920, because such cessation was caused by those individuals who prior thereto had title to and controlled the said stocks, to wit: first Baldwin, Libbey and Ford, and then Baldwin, their contractual successor. The Clayton Act does not apply to them. And the Thatcher Company, if it did acquire the stocks on July 3, 1920 (which is denied), merely took over a situation already lawfully established, and did not produce or cause it.

IX.

If there has been any violation of law it has not been a violation of the Clayton Act, because the whole transaction deals with assets so far as

Thatcher Company is concerned, and not with stock. Any remedial action directed at assets must be in the District Court.

WHEREFORE the Respondent respectfully prays that it may be granted a rehearing before this Honorable Court upon the question above discussed.

THATCHER MANUFACTURING COMPANY

by WILLIAM W. PORTER and
HERBERT KNOX SMITH,
Attorneys for Respondent.

We hereby certify that the foregoing petition in our opinion is well founded and is made in good faith and not for the purpose of delay or any ulterior purpose.

WILLIAM W. PORTER,
HERBERT KNOX SMITH,
Attorneys.

EXHIBIT I

OPINION

In the United States Circuit Court of Appeals for the Third Circuit

FEDERAL TRADE COMMISSION, Petitioner *v.* THATCHER MANUFACTURING COMPANY, Respondent	No. 3167

OCTOBER TERM, 1924

On Application for Enforcement of an Order of the Federal Trade Commission

Before BUFFINGTON, WOOLLEY and DAVIS, Circuit Judges.

WOOLLEY, Circuit Judge. The Federal Trade Commission asks this court to enforce an order it has made against the Thatcher Manufacturing Company, the respondent, commanding it to cease and desist from the ownership and control of the assets and properties of three corporations which it obtained through its acquisition of their capital

stock, to divest itself of the assets and properties so acquired, and to divest itself of the stock or share capital of a fourth corporation. The proceedings were begun by a complaint filed by the Commission under Section 7 of the Clayton Act (38 Stat. 730) charging the respondent, first with the acquisition of the entire capital stock of four competing corporations, and, next, with its acquisition of all the assets and properties of three of those corporations through its stock control, the effect of which was substantially to lessen competition, restrain commerce and create in the respondent a monopoly in the business of manufacturing milk bottles. The order was made on elaborate findings of fact based mainly on a stipulation as to facts entered into by the parties and on other matters obtained from records which the respondent freely opened and made available. There is therefore little dispute about the facts and no trouble in deciding that the Commission's findings are, except in one matter, sustained by the evidence. The controversy turns on the inferences properly to be drawn from the facts and therefore on the single question whether the transactions were in violation of Section 7 of the Clayton Act. As they were highly complicated we shall, in stating the case, give only enough to show their character and effect.

Of the corporate actors in this case the Thatcher Manufacturing Company, the respondent, is a corporation of the State of New York with its principal office and manufacturing plant at Elmira, New York and branch manufacturing plants in West Virginia and Ohio. It was enengaged in the manufacture of milk bottles by automatic bottle-blowing machines under an exclusive patent license from the Owens Bottle Company.

The Essex Glass Company was a corporation of the State of Ohio having its principal office at

Mount Vernon, Ohio, and plants in Ohio and West Virginia.

The Travis Glass Company was a corporation of the State of West Virginia with its principal office and manufacturing plant at Clarksbury, West Virginia, and a branch plant at Cedar Grove, West Virginia.

The Lockport Glass Company was a corporation of the State of New Jersey with its principal office and manufacturing plant at Lockport, New York.

The Woodbury Glass Company is a corporation of the State of Indiana with its principal office and manufacturing plant at Winchester, Indiana.

The J. T. & A. Hamilton Company was a corporation of the State of Pennsylvania with its principal office and manufacturing plant at Pittsburg, Pennsylvania.

All these corporations were engaged in manufacturing milk bottles and selling them in interstate commerce in competition with one another and with other concerns similarly engaged.

The Owens Bottle Company was a corporation of the State of Ohio, with factories in Ohio, West Virginia and Indiana, and was engaged in the manufacture and sale of glassware but not in the manufacture of milk bottles. It had acquired the exclusive right to use the Owens bottle-blowing machines in the United States and had granted the respondent an exclusive license under the patents for the manufacture of milk bottles.

In 1917 the Hartford-Fairmont machine appeared in the art. This was another automatic bottle-making machine and it quickly demonstrated that it was the equal and in some respects the superior of the Owens machine. These two were the only successful entirely automatic bottle-making machines then in use. Exclusive licenses to

use the Hartford-Fairmont machines for manufacturing milk bottles were secured by the Essex, Travis, Lockport and J. T. & A. Hamilton Companies. The Woodbury Company secured a non-exclusive license to use the Hartford-Fairmont machines for making bottles of other kinds.

Early in 1919, I. T. Axton, president of the Woodbury Company, conceived a plan of merging the Woodbury Company with the companies that held Hartford-Fairmont licenses. Axton controlled the common stock of the Woodbury Company and secured options on the entire capital stock of the Essex, Travis and Lockport Companies and an option on the machine, license and milk bottle business of the J. T. & A. Hamilton Company. Failing in his attempt to merge these corporations, Axton approached F. E. Baldwin, president of the respondent corporation, and suggested that he take over his options and carry out the merger. Baldwin consulted H. C. Mandeville, a director of the respondent, and also E. D. Libbey, president of the Owens Bottle Company, to that end. The Owens Bottle Company offered no objection to the plan and, being interested in competitive bottle-making machines, Libbey agreed to go into the deal and assist in raising the necessary money, provided he could acquire the Hartford-Fairmont patents. Baldwin, Mandeville and Libbey then took over the Axton options and proceeded to exercise them. Up to this time the respondent had not appeared in the transaction. This was in August 1919; the options expired on September 1, following. With some haste Mandeville secured the incorporation of the Sterling Glass Company, Inc. to serve as a temporary means through which to exercise the options and effect the merger. This company was incorporated under the laws of New York with an authorized capital of $600,000. Stock of $500,000 was issued

at par for cash. One half of its issued capital stock was taken by E. D. Libbey and the other half by the respondent. The sum of $2,110,000 in cash was required to carry out the options. Of this, $500,000 was available from the Sterling Company. The balance, or $1,610,000, Baldwin, Libbey and William Ford, the latter a business associate of Libbey, arranged to borrow from the Guaranty Trust Company of New York on their individual promissory notes, each note to be endorsed by the makers of the other two so that all were equally liable. On August 28, 1919, the stockholders of the Essex, Travis, Lockport and Woodbury Companies and Baldwin, Libbey and Ford met at the office of the Guaranty Trust Company. The precise order of the events which followed is difficult to ascertain. They were in substance as follows: Baldwin, Libbey and Ford gave the Trust Company their notes for which they received money which they turned over to the Sterling Company, and the Sterling Company, then being in possession of the full purchase price, paid the same to the holders of the stock of the Essex, Travis, Lockport and Woodbury Companies and received their certificates endorsed in blank, which it turned over to the Trust Company as collateral security for the notes. With the balance of the money, the Sterling Company (or Baldwin) paid for the outright purchase of the machines, license and rights of the Hamilton Company. As the order under review does not require the respondent to divest itself of the physical properties purchased from the Hamilton Company, we shall not consider the part of the transaction affecting that company nor shall we mention it except when necessarily incidental to the other phases of the transaction.

Immediately after the capital stock of the four companies had thus been acquired, Baldwin ap-

peared before the vendors and requested the officers of the four companies to remain in their respective positions and continue the operation of the companies until further directed. The respondent controlled these corporations under their respective managements until January 1, 1920, when their entire business was taken to Elmira and thereafter managed directly by the respondent. After the capital stock of the Essex, Travis, Lockport and Woodbury Companies had been acquired, Baldwin, Libbey, Ford and the Sterling Company entered into an agreement in which, by preamble, they stated that it was their purpose at a later date to organize a permanent company to take over the plants and assets of the four companies together with the plants and assets of the respondent, and to that end they agreed that the Sterling Company should save harmless the other parties to the agreement from all liability arising from the notes and that " upon the payment of the said notes all of the collateral thereto shall become the property of the Sterling Company;" that if Libbey should not acquire the Hartford-Fairmont patents, or if the parties should fail to agree upon the form, capitalization, or organization of the permanent company, Libbey and Ford might at any time, on notice to Baldwin, retire from the agreement; that in the event of their retirement, Baldwin should assume all liability under the contract and all liability upon the notes and repay Libbey the $250,000 he had invested in the capital stock of the Sterling Company; and that, thereafter, Baldwin should proceed with the organization of the permanent company in such manner as he might see fit.

Shortly after entering into this agreement Libbey found that he could not acquire the Hartford-Fairmont patents and thereupon served notice on Baldwin of his intention, and the intention of Ford, to retire from the transaction. On

the retirement of Libbey and Ford the plan for a permanent corporation, into which all the companies including the respondent were to be merged, came to an end and a new situation arose in which there were outstanding individual obligations of Baldwin, Libbey and Ford amounting to $1,610,000 due the Trust Company, the obligation of Baldwin to buy Libbey's $250,000 of stock in the Sterling Company and his obligation to assume Libbey's and Ford's indebtedness. There was also outstanding an obligation on the part of the Sterling Company to save harmless all the parties to the agreement from all liability arising from the making and endorsing of the notes. The Sterling Company had no money, for it had expended its whole capital of $500,000 in supplying a part of the purchase money for the stock of the four companies. Here the respondent again entered the transaction and gave the Sterling Company $250,000 with which it took up Libbey's stock and received the certificates. The respondent then held $500,000 of the full paid capital stock of the Sterling Company, all of which had entered into the purchase of the stock of the competing companies. With the Trust Company loan unpaid, the certificates for the stock of the Essex, Travis, Lockport and Woodbury Companies (held by the Trust Company as collateral) were sent to Elmira and there formally cancelled and new certificates issued to persons nominated by Baldwin, and then, on being endorsed in blank, they were delivered to the Trust Company as collateral security for the loan. All the new certificates were issued to four persons, Baldwin, Mandeville, Niver and Collins, officers and employees of the respondent corporation. Baldwin was elected president and Collins secretary of the four companies. None of the persons to whom the stock was issued paid any money for it or gave any other consideration.

The relation of the respondent with the four companies continued financially intimate. It advanced $10,000 to the Woodbury Company and $25,000 to the Travis Company, and received $75,000 from the Essex Company which it mingled with its funds and treated as its own. In an annual report which Baldwin made to the stockholders of the respondent corporation he referred in terms of congratulation to the merging of the Essex, Travis, Lockport and Woodbury Companies with the respondent and its purchase of the Hartford-Fairmont milk bottle machine and business of the Hamilton Company. Without quoting this communication it is enough to say that it states without doubt that the transactions of purchase and merger were made by the respondent corporation and were greatly to its financial advantage.

The indebtedness upon the three notes given by Baldwin, Libbey and Ford was still running, and in order to meet it when it should mature an agreement was made by Baldwin with two bond houses of New York. This agreement provided that the respondent should acquire all "the assets and business" of the Essex, Travis and Lockport Companies and all the shares of stock of these companies then owned by the Sterling Company (all the stock of the latter company being owned by the respondent), and that it should also acquire all the common stock of the Woodbury Company then owned by the Sterling Company, and that the respondent should assume all the obligations of all these corporations and that, thereafter, they should be dissolved. It was further agreed that the respondent should increase its capitalization from $1,000,000 to $1,625,000 and should issue $2,000,000 of bonds to which the bond houses would prescribe. All this was eventually, and contemporaneously, carried out at a meeting at which all interested parties were present. At

this meeting the Essex, Travis and Lockport Companies, by separate bills of sale, for the consideration of one dollar, conveyed all their property and assets of every kind to the respondent. The respondent delivered to the bond houses $2,000,000 of bonds secured by its mortgage or deed of trust covering all the property which it originally owned and all the property which it had just acquired by the bills of sale. The bond houses paid the respondent for the bonds. With this money the respondent paid the Trust Company the amount due upon the Baldwin, Libbey and Ford notes, and the Trust Company surrendered the shares of the four companies which it held as collateral. Some days later the Essex, Travis and Lockport Companies (together with the Sterling Company) were dissolved. The stock of the Woodbury Company was delivered as additional security for the bonds. In due course the bonds were called and retired and the mortgage or deed of trust given to secure them was cancelled. The respondent now holds the entire common capital stock of the Woodbury Company, and all the properties of the Essex, Travis and Lockport Companies free of the lien of the mortgage or deed of trust and free of any obligation arising from the recited transactions.

The provision of Section 7 of the Clayton Act which the Federal Trade Commission found that the respondent corporation had violated reads as follows:

> "No corporation shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of two or more corporations engaged in commerce where the effect of such acquisition, or the use of such stock by the voting or granting of proxies or otherwise, may be to substantially lessen competition between such corporations, or any of them, whose stock or

other share capital is so acquired, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce."

The Commission found that the respondent had violated this section by its "acquisition of the capital stock of the Essex Glass Company, the Travis Glass Company, the Lockport Glass Company, and the common capital stock of the Woodbury Glass Company, on August 28, 1919, and in the subsequent developments and transactions stated in these findings consisting mainly of the "transfer and conveyance to the respondent of the assets, rights and properties" of these companies, and their subsequent dissolution, and held that "these were an artifice and subterfuge of the respondent to evade the provisions of the said Act of Congress and to escape the penalties thereof." The respondent, on the other hand, thought it discerned in the Clayton Act a difference between the acquisition of stock of a competing corporation and the acquisition of its physical properties and, accordingly, conducted the transactions along the line of that theory. It now complains that the Federal Trade Commission, by its order and by its petition here presented for its enforcement, is endeavoring to enlarge the words and expand the meaning of Section 7 of the Act from the acquisition of stock of a competing corporation, which in terms is prohibited, to the acquisition of property of a competing corporation, which is not prohibited in terms. However this may be, the record in this case does not raise a question involving this distinction but presents squarely the question whether by the transactions recited the respondent, in violation of the literal terms of the provision, did "acquire, directly or *indirectly*," the stock of two or more corporations, "where the *effect* of such acquisition, or the

use of such stock by the voting or granting of proxies or *otherwise*, may be " to bring about the forbidden situation in commerce.

For defense on this issue the respondent admits, of course, that it acquired the physical properties of the named competing corporations but denies that it ever acquired their stock, directly or indirectly. It takes the position that the adventure was Baldwin's; that it was mainly with money borrowed on the credit of his name that the stock was bought; that on the withdrawal of Libbey and Ford the whole liability for meeting the notes and the whole responsibility for putting through the transaction were his; that the stock was transferred from the vendor holders to his nominees; that the shares were never transferred to the respondent nor was there ever any record evidence of its ownership; that the stock and the administration of the purchased corporations were likewise within the control of Baldwin to do with as he might see fit; that the most the respondent acquired in respect to the stock of the several corporations was the equitable title *after* these corporations had conveyed all their assets and properties to it; and that these conveyances made the stock whose equitable title the respondent had thus acquired valueless, because no assets or properties of any kind stood behind it. And finally, the respondent contends that the Act was not violated because the stock *when* acquired was not the stock of *competing* corporations within the sense of the Act because these corporations in disposing of their physical property to the respondent had also sold to it their licenses for bottle-making machines, without which they were not then able to do business and compete in commerce.

We have not been persuaded to this view of the transaction. To obtain the correct view we shall look at the transaction through the eyes of the

statute. Primarily at least the statute (Section 7) deals with acquisition of stock of one corporation by another; in terms it is silent as to the acquisition of property of one corporation by another. So, in this case, we shall look for stock acquisition, not for acquisition of property. Acquisition, as that word is used in the statute, means ownership; ownership involves title; and title is of two kinds, legal and equitable. In inquiring into the respondent's ownership of the stock of the four companies we shall look at the title of the stock and follow it through its devolution. In doing this we first find title in the original unnamed owners who for money considerations sold their shares and divested themselves of all title. When the title left them it went to somebody else. Who was it? This question may be answered by finding whose money moved the title from the original owners. Of this money $500,000 was that of the Sterling Company, given it by the respondent and Libbey for the express purpose of buying these shares. The balance of the purchase money was obtained from the Trust Company by Baldwin, Libbey and Ford on their personal notes. On payment for the stock the original owners delivered the certificates endorsed in blank for negotiable purposes. Delivered them to whom? This is not clear; but it is clear that, on delivery, the certificates were lodged with the Trust Company as collateral security for the loan to Baldwin, Libbey and Ford and that the title on leaving the original owners passed to someone else. To whom? This is difficult to answer, and we think not necessary to answer just now, for the reason that the transaction of purchase had not been completed and was then, by the terms of the agreement, liable to transformation, as afterwards occurred. Baldwin had not contributed to the purchase any money of his own although admittedly the purchase money was in part raised on the

credit of his name and in part with funds of the Sterling Company, a subsidiary of the respondent. Whether Baldwin and the Sterling Company thus became part owners of the legal or equitable title of the shares is also unnecessary to decide, for the next thing that happens was the transfer of the stock (while still held by the Trust Company as collateral) from the names of the original owners to names of men mentioned by Baldwin, of whom he himself was one. Concededly the other three men had contributed nothing to the stock purchase and never had title in themselves, unless indeed, they held title for the real owners of the shares, whoever they were.

In this situation the respondent was operating the four companies from its central office, directing its affairs, making financial contributions to and receiving financial returns from some of them.

The next event touching title was the withdrawal of Libbey and Ford from the transaction, leaving Baldwin or someone else to pay their notes when they matured. Baldwin did not meet these obligations but arranged with the respondent to do it. And this the respondent did by first augmenting its assets by acquiring the physical assets and license rights of the three competing corporations and the common stock of the fourth and issuing its bonds for $2,000,000 secured thereby, and with the proceeds of the bonds paying the personal indebtedness of Baldwin, Libbey and Ford. Thus the respondent with its own money directly supplied the larger part of the purchase money, and with its own money, through the Sterling Company, indirectly paid the balance of it. So in the last analysis the whole purchase price of the stock of the four competing corporations was paid by the respondent company with its own funds. While throughout the transaction Baldwin and the respondent kept the name of the respondent off

the certificates for the shares of the four companies, the fact remains that it was with its money that the shares were in part initially bought and at last wholly paid for. It is difficult to see how the use of the respondent's money in the purchase of the shares did not draw to it the ownership of the shares. The interposition of the Sterling Company, created by the respondent to spend its money in the purchase, was not the act of a legal entity which can blind the court to the real transaction or bar the operation of the statute. "Courts of equity will look behind a corporate fiction, and if it clearly appears that one corporation is merely a creature of another, the latter holding all the stock of the former, thereby controlling it as effectively as it does itself, it will be treated as the practical owner of the corporation, when necessary for the purpose of doing justice." United States *v.* United Shoe Machinery Company, 234 Fed., 127; 258 U. S., 451; Brown *v.* Pennsylvania Railroad Company, 235 Fed., 669; 250 Fed., 513. "If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons." United States *v.* Milwaukee Refrigerator Transit Company, 142 Fed., 247.

The respondent paid no money (or, to be specific, it paid only three dollars) for all the assets and plants of three of the competing corporations. It made this large purchase on merely nominal considerations by "use" of its control over those corporations, and its control was effected only because of its ownership of their stock. Baldwin did not own the stock because he had never

paid any money for it. If, however, the shares belonged to Baldwin by virtue of their purchase with money partly raised on his note, then the shares still belong to him, for there is no evidence that he has sold them to the respondent. Yet the respondent admits that it holds the equitable title to the shares for the reason that finally the shares were paid for with its money.

Limiting our decision to stock acquisition as distinguished from property acquisition, we are of opinion that the respondent acquired the stock of the Essex, Travis and Lockport Companies in a manner inhibited by Section 7 of the Clayton Act if the effect of the transaction was substantially to lessen competition between the corporations, or to restrain commerce, or to create a monopoly. We shall not review the evidence on the effect of the transaction. It will be enough to say that it sustains the finding of the Commission that the effect was that which the statute was enacted to prevent.

To carry out the purpose of the statute the Commission therefore made an order commanding the respondent (a) to cease and desist from the ownership and control of the assets and properties of the three corporations it had acquired through its acquisition of their stock; (b) to divest itself of the assets and properties thus acquired and of the control of the said stock; and (c) to submit for the approval of the Commission a plan for the performance of the order, jurisdiction for that purpose being retained. The respondent maintains that, aside from the merits of the case, the order is invalid first, in that it exceeds the powers conferred upon the Commission by the Act, and second, in that it is, in the circumstances, impossible of performance. It bases its contention first on the statute which it says limits the authority of the Commission to a command addressed to the

offending corporation to divest itself of the "stock" of another corporation acquired in violation of the Act, and next on the difficulty, or impossibility, of dissassembling the assets of the corporation acquired from assets of its own. On the first position we hold that the Act is remedial, not punitive. Western Meat Company *v.* Federal Trade Commission, 1 Fed. (2d), 295, rehearing Fed. . Therefore the sole purpose of a valid order of the Commission must be to remedy an unlawful situation. In effecting the remedy, however, the Commission must meet the situation as the offending corporation has made it. If it created the situation so as to defeat the statute, the offending party cannot be heard to say that thereby the Commission is helpless and the law unenforcible. The familiar principle that a person can not profit by his own unlawful act applies. Not in every case can the Commission reach property acquired through stock acquisition, but where, as in this case, the offending corporation has stripped the stock of its value and where, accordingly, the mere divesting itself of the stock would leave the corporation in full possession of the entire fruits of the forbidden transaction, we are of opinion that the statute empowers the Commission to carry out its purpose by extending its hand to the property. Nor do the acts of the offending corporation in commingling the assets of the corporation whose stock it has acquired in violation of the statute with assets of its own raise a legal barrier against remedying an evil which the law was expressly enacted to prevent. Just how, in a practical way, this shall be done in the case at bar the Commission purposely left open by the last paragraph of the order which directed the respondent to submit a plan to that end. As no plan has been submitted, none is before us. Therefore,

with the way to do the thing we are not presently concerned.

The order of the Commission is so far as it relates to the stock and to the assets and properties of the Essex Glass Company, the Travis Glass Company, and the Lockport Glass Company is approved and its enforcement directed.

Not every acquisition by one corporation of the stock of a competing corporation is forbidden by Section 7 of the Clayton Act. The Act, by express terms, says that Section 7 does not apply to a corporation "purchasing such stock * * * and not using the same to bring about, or in attempting to bring about, the substantial lessening of competition." Testing the transaction (as it affected the Woodbury Company) by the whole of Section 7, the evidence discloses that before the respondent acquired the stock of the Woodbury Company that corporation was engaged chiefly in the manufacture of condiment and whiskey bottles and that its manufacture of milk bottles was very small, amounting annually to about 8,000 gross out of a total production in the United States of over 1,000,000 gross. The evidence also shows that it was gradually getting out of the milk bottle business and that, indeed, before the transaction in question arose it had determined to do so. When its stock was acquired the respondent took over its outstanding contracts, one or two in number, and filled them. The respondent's real object in acquiring the Woodbury stock, as we see it, was to acquire its patent license, that being a non-exclusive license to use the Hartford-Fairmont feeders in the manufacture of condiment bottles, fruit juice bottles, fruit containers, fruit jars, and glassware for carbonated soft drinks, branches of the glassware business in which the respondent was not engaged and therefore in which it was not a competitor. While the effect of the transaction upon the Woodbury Company was to stop its manufacture of milk

bottles and accordingly to end its competition in milk bottle manufacture, the number of milk bottles the Woodbury Company made was so inconsiderable that the lessening of competition thereby was not substantial. We are therefore of opinion that the evidence does not sustain the Commission's finding that the respondent's acquisition of the stock of the Woodbury Glass Company substantially lessened competition between the corporations, restrained commerce and tended to create a monopoly. That part of the Commission's order is therefore not approved and will not be enforced.

BUFFINGTON, J.

In view of this case involving a far reaching question of jurisdiction I note my dissent. The original purpose Baldwin had in view, and which he finally carried out, was the acquisition and absorption of the several corporations involved by the purchase of their entire properties. If, in so doing, he suppressed competition the remedy for such wrong was vested in the courts and not in the trade commission.

The necessity for the prompt exercises of the options upon such properties, the unlooked for situation created by the withdrawal of his associates and the unloading of the whole financial burden on him together with the complicated stock handlings made necessary in the successful financing of his original plan, gave the matter the appearance, but not the reality of a stock acquisition plan, but in my judgment the transaction as a whole, in its original plan, its execution and effect, was an acquisition of property, not of stock, and jurisdiction over it, if amenable to the law, was vested in the Federal Courts and not in the Federal Trade Commission. Such being my view I feel it my duty to respectfully record my dissent.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 3167

FEDERAL TRADE COMMISSION, Petitioner,

v.

THATCHER MANUFACTURING COMPANY, Respondent

ANSWER TO RESPONDENT'S PETITION FOR REHEARING

A. R. Brindley, Attorney for Petitioner. W. H. Fuller, Chief Counsel, Federal Trade Commission.
Received & Filed May 25, 1925. Saunders Lewis, Jr., Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 3167

FEDERAL TRADE COMMISSION, Petitioner,

v.

THATCHER MANUFACTURING COMPANY, Respondent

ANSWER TO RESPONDENT'S PETITION FOR REHEARING

To the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit:

The Federal Trade Commission, answering the petition for a rehearing upon the decision rendered by this Court on April 16, 1925, respectfully submits that the petition should be denied.

The petition, on the first page, asserts that the respondent, in requesting a rehearing, feels an obligation in the nature of a public duty. Five reasons, numbered (a), (b), (c), (d), and (e), are thereupon set out on pages 1 and 2, and the petition continues:

Having in mind these considerations of public concern, as well as its own private interest, the respondent believes that this case was so complex, the evidence so obscure, the train of events so difficult to follow, that a peculiar duty rests upon respondent to make the same clear, and that it has thus far evidently failed in doing so.

Not one of the five reasons, nor the statement just quoted, constitutes a legal ground for a rehearing. To entitle a party to a rehearing there must be manifest error in the opinion, and a rehearing will be refused if no material fact or principle of law has been

overlooked or disregarded. (4 Corpus Juris, sec. 2480.) The failure of counsel sufficiently to present the cause for the determination of the Court furnishes no ground for a rehearing (4 Corpus Juris, sec. 2488), and a rehearing will not be granted solely because questions of great importance are involved. (4 Corpus Juris, sec. 2492.) The authority just cited (4 Corpus Juris) states the rule on page 629, note (81a), as follows:

> In the United States Circuit Court of Appeals rehearings will not be granted on the ground that the case is of great importance, unless there is also a suggestion that some controlling authority has been overlooked, and this is especially true where the decision is subject to review by the Supreme Court. Camfield v. U. S., 67 Fed. 17, 14 C. C. A. 228.

The petition states no legal ground for a rehearing, advances no new question of law or fact, and cites no authorities. Every question presented by the petition, every conclusion now urged by the respondent, was fully presented to this Court in the brief and oral arguments and doubtless received the consideration to which, in the opinion of the Court, it was entitled. Reiteration adds no force or persuasiveness.

On page 7 of its original brief, under the title "First Defense," the respondent made the following assertions:

> The legal issues themselves are few and rather elementary. * * * The burden is upon the petitioner to show acquisition of stock, with the resulting evils denounced by the Clayton Act. The facts in this case are not in any substantial dispute. The issues arise as to the interpretation of said facts, the conclusions drawn from them, and the law to be applied to them. (Respondent's brief, p. 7.)

The duty upon the Court was met promptly. It passed upon facts which "are not in any substantial dispute," determined legal issues which "are few and rather elementary," and decided that the "burden upon the petitioner to show acquisition of stock with the resulting evils denounced by the Clayton Act" was sustained by the testimony. Yet the respondent now seems displeased and seeks a rehearing upon the same facts, the identical issues, and a reiteration of its conclusion and arguments.

The petition, with slight regard to sequence, makes desultory quotations from the opinion of the Court and seeks to demonstrate conclusions in line with its defense by reiterating former arguments. None of these conclusions, as the Court decided, is sustained by testimony. Some of them will be mentioned, and the testimony in the record disproving them will be cited.

On page 3 of the petition it is recited:

> So that the respondent respectfully represents that the source of the great bulk of the purchase money which moved the title from the original owners came from these three individuals (i. e., Baldwin, Libbey, and Ford), and that the title, therefore, must have passed to them and to their subsequent assignee and contractual successor.

Who was the subsequent assignee and contractual successor of Baldwin, Libbey and Ford? To whom did Baldwin, Libbey and Ford assign or convey any rights or assets? Not a single transfer, assignment, or conveyance was made by either of them to any person, except that Libbey transferred his half of the stock of the Sterling Glass Company to the respondent, the respondent paying Libbey therefor and becoming thereby the owner of all the stock of the Sterling Company. (Tr. pp. 138, 158, 159.)

The petition on page 5 thereof recites:

And the respondent therefore represents that the only thing that Thatcher Company did on July 3, 1920, was to furnish to Baldwin the money to pay his notes, which money was the purchase price of the assets of the companies owned by Baldwin and purchased by Thatcher Company.

On page 11 of the petition it is also recited:

Therefore, when Thatcher Company finally furnished the money to Baldwin to pay the notes, it had not supplied the original purchase price. This had been supplied ten months earlier—it must have been in order to move the title out of the original owners. *All that Thatcher Company did was to purchase from Baldwin the assets of the companies.* [Italics supplied.]

These statements are not authorized by the record. There is not a deed, bill of sale, transfer, or assignment from Baldwin to respondent. All the deeds and bills of sale were executed to respondent by the Sterling, Essex, Travis, and the Lockport companies. (Exhibit F, p. 58; Exhibit V, p. 66; Exhibit Z-4, p. 70; Exhibit Z-6, p. 75.) If the last-quoted statement is true, it is queer that the attorneys for both respondent and the bond buyers thought title rested in respondent, with no conveyance from Baldwin.

Paragraph II of the petition, on pages 4 and 5, contains the following:

Under the express conditions of the contract for such contingency, the only possible result of such withdrawal and disassociation was to place in Baldwin all the equitable rights previously held by Libbey and Ford, because Baldwin, upon such withdrawal, assumed the complete and ultimate liabilities of all parties, including Sterling Company, for the purchase price.

That theory was presented to the Court in respondent's brief and oral arguments. Time has not improved its flavor, and it is as incorrect now as it was then. Baldwin did not assume the liability of Libbey and Ford, nor the liabilities of the Sterling Company, when Libbey and Ford withdrew. The respondent assumed all the liabilities and paid all the obligations. The record shows (Exhibit X) a letter from respondent, by Baldwin, its president, to Sterling Glass Company stating the desire to have the Sterling Company dissolved and its assets and property assigned to respondent. That letter states that "upon such a transfer the Thatcher Manufacturing

Company will assume and pay all debts and obligations of the Sterling Glass Company, Inc., *including all of its obligations under a certain agreement made the 28th day of August, 1919, between Francis E. Baldwin, party of the first part, William Ford, party of the second part, and Sterling Glass Company, Inc., party of the third part.*" [Italics supplied.] The assumption by the respondent and the transfer to it of all rights, interests, and obligations under the contract of August 28, 1919, are recited in the conveyance from Sterling Company to respondent (Exhibit P, p. 58).

In Paragraph VI, on page 11, the petition recites (italics supplied):

Respondent further respectively represents that it is true that the evidence in part indicates that *Mr. Baldwin thought that Thatcher Company acquired equitable ownership of the stocks after July 3, 1920.* But respondent, in this respect, represents that such statements by Baldwin were simply *a careless use of inexact language*, referring to a negligible question, and that he meant that Thatcher Company, by the purchase of assets, then secured everything that the stocks represented, and that the stock certificates, merely waste paper then, came along with the rest. In fact, no one knew what had become of them.

That is a remarkable statement. It is true that the evidence shows that Baldwin thought that Thatcher Company acquired the ownership of the stocks. But he did not think the Thatcher Company acquired ownership of the stocks after July 3, 1920. Baldwin's annual report to respondent's stockholders (Exhibit K) was made February 18, 1920, almost five months prior to July 3, 1920. In that report Baldwin stated:

Upon the 29th day of August we purchased the capital stock of the companies named.

and also that

The money was borrowed for the making of this purchase of the Guaranty Trust Company of New York. We were assisted in obtaining same by E. D. Libbey, president of the Owens Bottle Company, and Mr. William Ford, a large stockholder in the Owens Company. (Exhibit K, p. 43.)

Again, on April 10, 1920, almost three months prior to July 3, 1920, Baldwin made his contract with the bond buyers (Exhibit L), and recited therein that—

All of the shares of stock of said companies (i. e., Travis, Essex, and Lockport Companies) being now owned by the Sterling Glass Company, whose shares of stock are all owned by the corporation. (Exhibit L, p. 47.)

These statements are plain and direct and were made in official written documents months prior to July 3, 1920, and they were not "simply a careless use of inexact language." They show that Bald-

win knew that the respondent had acquired the stock of the companies. At the time Baldwin made these written statements, the assets of the companies had not been purchased. The statement made in the petition that "he meant that Thatcher Company, by the purchase of the assets, then secured everything that the stocks represented" is an impossibility.

The petition, in Paragraph IX, recites that—

> If there had been any violation of law, it has not been a violation of the Clayton Act, because the whole transaction deals with assets so far as Thatcher Company is concerned, and not with stock. Any remedial action directed at assets must be in the District Court

The opinion of the Court is to the contrary, for it recites:

> Limiting our decision to stock acquisition as distinguished from property acquisition, we are of opinion that the respondent acquired the stock of the Essex, Travis, and Lockport companies in a manner inhibited by Section 7 of the Clayton Act. * * * We shall not review the evidence on the effect of the transaction. It will be enough to say that it sustains the finding of the Commission that the effect was that which the statute was enacted to prevent.

The suggestion that remedial action must be in the District Court is an after-thought, now injected for the first time. It ignores Section 11 of the Clayton Act, which provides that the jurisdiction of the Circuit Court of Appeals to enforce, set aside, or modify orders of the Commission shall be exclusive.

In Paragraph VIII, on page 13 of the petition, respondent quotes from the Commission's findings and then presents an argument which is taken from page 55 of respondent's original brief. Both the brief and the petition overlook the fact that an argument similar to the one advanced on page 13 of the petition was rejected by this Court in the Aluminum Case (284 Fed. 401).

The Federal Trade Commission respectfully submits that the petition for a rehearing should be denied, and the respondent referred to its remedy in the Supreme Court.

A. R. Brindley, Attorney for Petitioner. W. H. Fuller, Chief Counsel Federal Trade Commission.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1924

No. 3167 (List No. 39)

FEDERAL TRADE COMMISSION, Petitioner,

vs.

THATCHER MANUFACTURING CO., Respondent

Sur Petition for Rehearing

And now, to wit, June 2, 1925, after due consideration, the petition for rehearing in the above-entitled case is hereby denied.

Philadelphia, —— — , ——.

Per Curiam.

Endorsements: 3167. Order Denying Petition for rehearing Received & Filed Jun. 2, 1925. Saunders Lewis, Jr., Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1923

No. 3167

FEDERAL TRADE COMMISSION, Petitioner,

vs.

THATCHER MANUFACTURING COMPANY, Respondent

The motion of counsel for the Federal Trade Commission to reform the order of this Court lately made in Federal Trade Commission vs. Thatcher Manufacturing Company is denied and the motion of counsel for the Thatcher Manufacturing Company for a stay of the decree to enable the respondent to apply for and obtain a writ of certiorari from the Supreme Court is granted, the stay to extend to the 15th of October next, and if, before that date, the Thatcher Manufacturing Company has filed its petition for writ of certiorari with the Supreme Court, then until the Supreme Court has disposed of the same.

Victor B. Woolley

June 12, 1925.

Endorsements: 3167. Order denying petition to rectify decree and staying mandate to 10/15/25. Received & Filed June 12, 1925. Saunders Lewis, Jr., Clerk.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania,
Third Judicial Circuit, set:

I, William P. Rowland, Deputy Clerk of the United States Circuit Court of Appeals, for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original record and proceedings of this Court in the case of Federal Trade Commission, Petitioner, vs. Thatcher Manufacturing Co., Respondent, No. 3167, on file, and now remaining among the records of the said Court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said Court, at Philadelphia, this 2nd day of September, in the year of our Lord one thousand nine hundred and twenty-five and of the Independence of the United States the one hundred and fiftieth.

Wm. P. Rowland, Deputy Clerk of the U. S. Circuit Court of Appeals, Third Circuit. (Seal of the United States Circuit Court of Appeals, Third Circuit.)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 26, 1925

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(611)